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WELD-CELLUCCI
1992 ECONOMIC GROWTH PLAN

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The Weld/Cellucci 1992 Economic Growth Plan

Table of Contents

		Page
	Introduction	1
I.	Tax Policy	3
II.	Revitalization of Distressed Areas	9
III.	Initiatives to Ease the Credit Crunch	10
IV.	Target Specific Core Industries	13
V.	Domestic and International Promotion	17
VI.	Improving K-12 Education and Workforce Development	20
VII.	Energy	21
VIII.	Long-Term Economic Development Plan	22

Appendix

I. Executive Order

II. Legislation

II. Regulatory

III. Constitutional Amendment

IV. EOAs

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The Weld-Cellucci 1992 Economic Growth Plan

INTRODUCTION

The Weld-Cellucci 1992 Economic Growth Plan is an aggressive strategy to jolt the Massachusetts economy into recovery in 1992, and to continue the structural improvements necessary to foster growth over the long term. We intend to wage a vigorous battle on several fronts to achieve tangible economic gains that result in jobs for our people.

The Growth Plan has four notable characteristics. First, this is a strategy for immediate implementation. We are prepared to take bold action now; for each recommendation in the plan substantial work has already taken place.

Second, we rely on the principle that business growth, not government growth, is the key to job creation and prosperity. The best way to guarantee a healthy environment for business growth is to reduce the burdens imposed by government.

Third, the plan is driven by policy that yields results, rather than by any single ideology. It demonstrates our willingness to take creative approaches to difficult conditions, and underscores our confidence in Massachusetts as we approach the next century.

Finally, we intend to build on the significant progress already made in 1991 by the joint partnership of the Legislature and our Administration. The reputation of Massachusetts as a place to do business is rapidly being restored. We have garnered national attention by the way we have balanced two budgets in a row without resorting to new borrowing or taxes, and we are attempting to institute performance-based budgeting to provide a crucial new measure of stability. In addition, Massachusetts' new research and development tax credit is the best in the nation, encouraging companies to increase investment in research that leads to new technology and new jobs.

No state has done more to reduce government-imposed costs to business. We won repeal of the sales tax on the service industry. We developed and passed a health insurance reform bill that eases the payment burden for companies. And, in what was perhaps the most decisive blow to high business costs, we passed a new worker's compensation system that ends the spiraling premium increases of the past several years.

The Weld-Cellucci 1992 Economic Growth Plan is broken down into eight broad policy areas. The following outlines the topics covered and indicates specific proposals. When appropriate, legislation or other relevant documents are attached.

I. TAX POLICY

The tax policy changes in this plan represent a fundamental shift in the purpose of the Massachusetts tax structure, from a money-siphoning instrument to pay for big government to an economic tool that encourages the creation of new jobs and prosperity. The changes are designed to maximize the most productive elements of our economy. In keeping with the historical sources of Massachusetts' prosperity, we are counting on the innovative and entrepreneurial drive of our people and companies.

We have selected tax policies that have the best potential for stimulating business investment. This plays to the strength of the Massachusetts economy. Our base of high-tech industry is capital intensive and research-and-development intensive. Massachusetts has the third highest concentration of high-tech employment in the nation. It is no coincidence that Massachusetts also has the third highest per capita income. In recognition of this, many of our proposals will have a direct impact on technology-based industries.

A. Income Tax Cut

The effect of our first initiative is broad-based. We propose to cut the 1992 personal income tax rate from 5.95 percent to 5.75 percent, effective immediately. This will put more income per year back into the hands of taxpayers, increasing individual spending for the benefit of all citizens of Massachusetts. This is the first step in a long-term plan to bring the tax rate down to 5 percent.

Along with the direct economic benefits that accrue from increased levels of consumer spending, these lower rates help to remedy a per capita tax burden that is still too high to be competitive in attracting businesses. In that regard, however, this proposal runs counter to the national trend of increases in state tax rates. What we propose will impact on our ability to attract new business and provide new jobs for our people, and thus more wealth for our communities.

B. Capital Gains Tax

To encourage higher levels of investment, we propose a gradual phase-out of the capital gains tax on long-term investments in Massachusetts companies. The rate will decline to zero over a period of six years. For non-productive assets, such as antiques and gold coins, no discount will apply.

This is clearly a boost to the emerging technology startup firms upon which so much of our recovery depends. There is a strong connection between favorable capital gains treatment and new investment leading to job creation. The decline in investments from the venture capital industry, which has a strong impact on the growth of new companies and new jobs, is an excellent illustration. When the capital gains tax is high, these investors opt out of Massachusetts and put their money elsewhere.

A capital gains tax reduction demonstrates a recognition of the principle that capital flows where it is treated best. Not only do Germany and Japan have no capital gains tax whatsoever, neither do twelve states in the U.S.A. Those states - Florida, Texas and New Hampshire, to name three -- happen to be exactly the states to which Massachusetts loses the most people and business. This has additional bearing on the prospects of our emerging technology startups. Much of their initial stage capital is raised from retirees who themselves were successful entrepreneurs. If they are not around, their capital will not be either.

As an additional benefit, this will remedy an injustice that is felt by the majority of our businesses in the Commonwealth, those family-owned establishments with ten employees or fewer. Under current law, when the head of the household retires and turns the business over to his or her children, the capital gains tax on the transfer is so burdensome it has often forced the children out of the business.

C. *20 Percent Investment Tax Credit*

Studies of the Massachusetts economy show that our engine is structurally sound. What it needs is a jump start. We propose a bonus 20 percent tax credit for investment above current spending for this year only, with the proviso of a generous five-year carry-forward.

This proposal is driven by national research that finds the investment tax credit is one of the most effective policy tools for stimulating business investment. We believe current economic conditions require that increased business investment be concentrated into 1992, for the sake of new jobs in 1992. The 20 percent credit will offer a strong incentive for companies to purchase new buildings, machinery, and other equipment in 1992.

D. *Job Growth/Training/Child Care Expense Credits*

This combination of credits is designed to directly accelerate the process of reducing unemployment. The proposals include a credit to businesses for the creation of jobs and for increases in productivity; a credit for expanding private training and retraining programs; and a credit for private child care programs.

The job growth and productivity credit lowers the cost of hiring new workers by offering a credit of up to 90 percent of an employer's tax liability for increased employment. The amount of the credit will depend on the increase in the normal payroll costs of a business over its corresponding payroll costs in 1990. Closely linked to this credit is the job training and child care credit. It offers business an additional credit equal to 10 percent of the cost of training new employees and providing on-site day care.

The need to promote job creation and productivity is clear. With an economy in structural transition, training and retraining of our resident human capital is vital for the future competitiveness of our industries. Availability of improved child care at the workplace will expand employment opportunities for many of our families while also increasing the overall productivity of our labor force.

E. Research and Development Credit for Industry-Sponsored Research at Educational Institutions in Massachusetts

The research and development credit adopted last summer included a 15 percent credit for "basic" research, the kind undertaken by industry in connection with educational institutions. Regulations need to be promulgated to effect this credit. Preliminary regulations have been drafted, a public hearing has been held, and it is expected that the regulations will be in effect by spring 1992.

F. *Extension of Manufacturing Designation*

To remove barriers to economic development we will administratively extend the manufacturing designation, providing a much-needed break to industries that most rely upon expensive manufacturing equipment. In Massachusetts, those industries tend to be characterized by start-up companies. This extension gives these new businesses all the tax benefits of established manufacturing companies, thus removing barriers to economic development.

G. *Constitutional Amendment Regarding Tax Legislation*

We encourage the Legislature to adopt a constitutional amendment requiring that any tax increase must receive at least a two-thirds favorable vote in both the House and the Senate. This would lock in the gains we have made toward fiscal stability, and would add further incentive for careful planning and control over expenditures.

The creation of procedural obstacles for tax increases is not simply a refreshing change; it is a necessity for Massachusetts' competitiveness in the effort to bring new business to the state. Modern industry requires a reliable forecast of costs over a period of ten to fifteen years. State government's part is to provide a level of confidence that the tax structure will be stable.

II. REVITALIZATION OF DISTRESSED AREAS

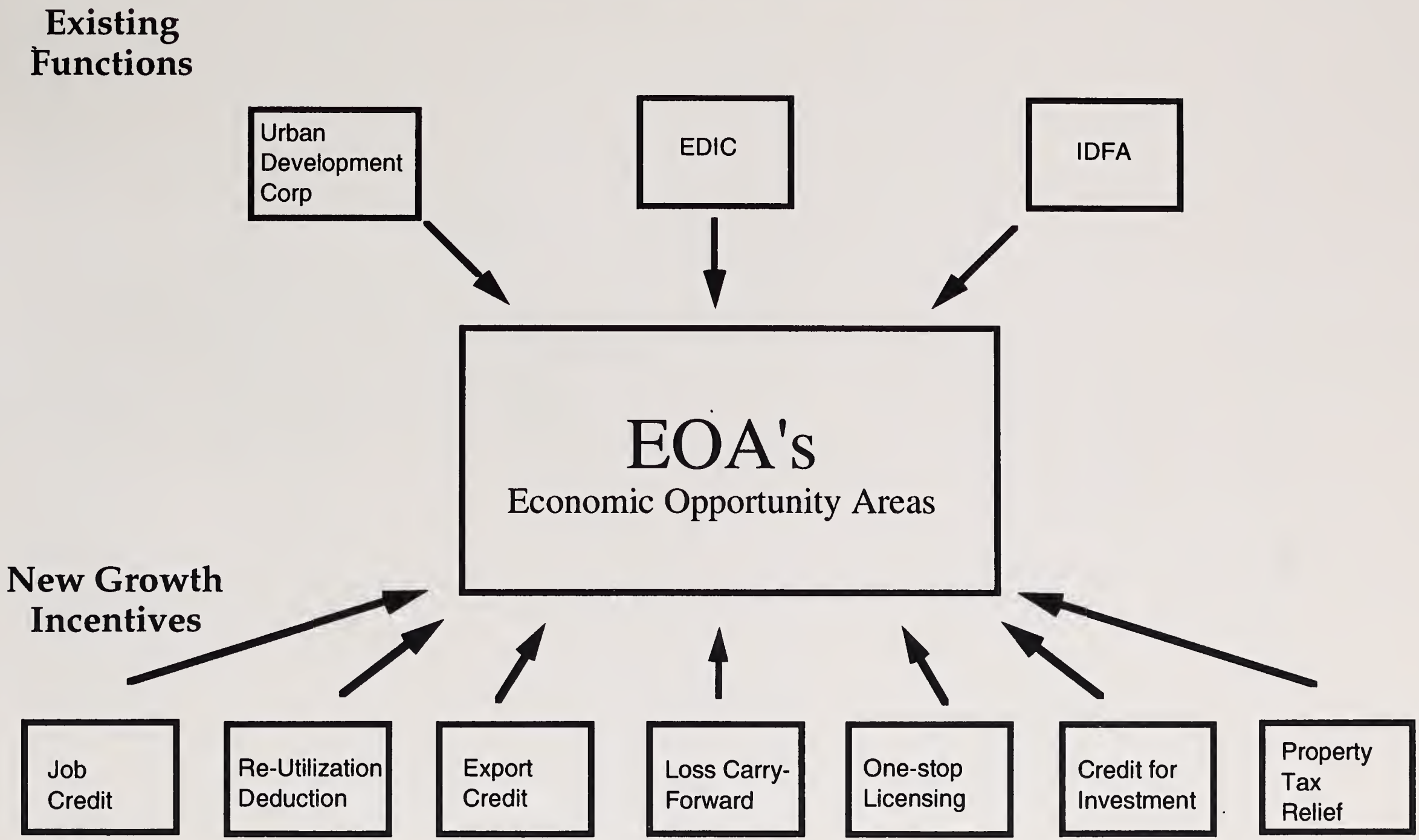
We are filing legislation, and will work with the Legislature and other interested parties, to fashion a law creating "Economic Opportunity Areas," or EOA's. EOA's will offer municipalities a new weapon to revitalize distressed areas by allowing them to compete aggressively for business development.

An EOA should offer a combination of local - and state - targeted incentives, including but not limited to: property tax relief; excise, export, and building re-utilization credits.

This concept draws from the best features of enterprise and foreign trade zone initiatives existing in other states and countries. In fact, a version of this legislation is now before Congress. If passed, it will provide an additional layer of federal incentives to those contained in this proposal.

The initiative would also take advantage of existing resources which have been underutilized in the past, such as Economic Development and Industrial Corporations (EDIC's), Industrial Development Finance Authorities (IDFA's), and Urban Development Corporations. Under an effective EOA statute, the power of these organizations to give cities and towns new business activity would be augmented.

Economic Opportunity Areas



III. INITIATIVES TO EASE THE CREDIT CRUNCH

A. Work to Alleviate Certain Federal Practices

Since the failure of the Bank of New England in January 1991, the Federal Deposit Insurance Corporation has become one of the primary owners of property and real estate-related loans in New England. As such, its management and disposition of these assets have a profound impact upon our economy.

Coupled with unnecessarily rigid regulatory practices, existing disposition policies have accelerated New England's economic downturn in that they were geared to rapid sales based on current market values, as opposed to real values. As real estate values have dropped, commercial banks have found their capital ratios in jeopardy, and viable companies have been forced toward bankruptcy as their equity has eroded. New England has become capital-starved, and immediate remedial action on several fronts is required.

We have recently brought these conditions to the attention of the FDIC and other federal authorities, and we have proposed new solutions that are more in line with New England's progress toward recovery.

B. Establish an Advisory Committee to Assess Public Economic Development Agencies

Public economic development agencies, including several quasi-public corporations, could be a critical element in improving credit availability for Massachusetts companies. However, there is currently no effective means to avoid duplication of effort and confusion of responsibility.

Therefore, the Governor is issuing an Executive Order to establish an advisory committee, which will study the activities of these agencies. It will be chaired by the Secretary of Economic Affairs, and will report its findings within 90 days. The committee, which will have the power of audit, will pay particular attention to how these agencies are responding to the credit crisis.

In addition, the advisory committee will make proposals regarding the following:

- the possible consolidation and coordination of the public economic development agencies;

- how to assist the Governor in representing the Commonwealth on matters related to federal credit policy;

- the development of a streamlined "one-stop shopping" method for the delivery of economic development assistance services;

- the creation of a rapid response mechanism for working with companies interested in locating or expanding in the Commonwealth; and

- the feasibility of forming compacts with other New England states to promote common economic interests, such as tourism.

IV. TARGET SPECIFIC CORE INDUSTRIES

Certain industries of vital importance to Massachusetts, including but not limited to defense, telecommunications, software, bio/pharmaceutical, and construction, are or will be, undergoing substantial transition over the next few years. How successfully we enable Massachusetts companies in these industries to take advantage of these transitions will have a significant impact on our prosperity into the next century. Various initiatives are proposed to address these areas.

One initiative that will apply to all major industries is regulatory reform. In the first phase of regulatory reform, we announced over 130 proposals, most of which bubbled up from within state government. We are resubmitting the legislation needed to bring many of those reforms into effect.

In the next phase, we will fan out through the private sector to scour the state, key industry by key industry, in an effort to determine those statutes and regulations that should be amended or repealed in order to allow business to operate more efficiently.

In addition, we will develop initiatives, where appropriate, to target industries of particular importance, such as the following:

A. *Telecommunications*

We are co-hosting a conference this month entitled "Winning the Global Telecommunications Race." Its purpose is to assess the fast-changing international telecommunications marketplace and to make Massachusetts, which already has more than one hundred telecommunications companies, a global center for this important industry.

B. *Software*

The Massachusetts software industry is one of the fastest growing sectors of our economy. In-state employment expanded 10 percent in 1990 and an estimated 16 percent in 1991. In May, we will host a Partners for Trade program to help software companies understand available worldwide opportunities. In addition, our trade missions to Europe will feature software as a major product focus.

C. *Bio/Pharmaceutical*

The bio/pharmaceutical industry will be the first key industry we examine in the next phase of regulatory reform because it is particularly sensitive to the regulatory climate. It will also be a major focus of our European trade missions. Furthermore, in April we will co-sponsor a Massachusetts bio/pharmaceutical seminar in Japan.

D. *Construction*

Massachusetts has lost nearly half of its construction industry jobs since 1988. In 1992, we have a $1.3 billion public construction agenda to address this critical situation. The Central Artery/Third Harbor Tunnel project will create an estimated 6,000 jobs, and there will be 20,000 more jobs created by other bridge and highway projects.

E. *Defense-related*

As the home of the Raytheon Corporation, the Fore River Shipyard, several hundred metalworking and machine tool shops, and many other defense-related companies, we can take great pride in Massachusetts' contribution to national security and world peace. However, the new international order that American defense capabilities have helped to create also presents us with new economic challenges in that defense contracts are now shrinking. Without effective action, this trend will have adverse consequences for the Massachusetts economy, where an estimated 260,000 Massachusetts jobs are related in some form to defense contracts.

Clearly, an effective technology transfer effort is crucial to our long-term well-being. With government assistance, it can be achieved. Most firms report little difficulty adapting their products to commercial markets; where they could use support is in areas such as exports, capital, and workforce training, as well as in the reduction of the overall cost of doing business in Massachusetts. We will deploy state government resources to foster economic diversification where desired by our companies. In addition, we will work with the Massachusetts congressional delegation to fight for our share of declining defense contracts.

Finally, the Governor's Council on Economic Growth and Technology will add a new task force on the defense industry to support this effort.

V. DOMESTIC AND INTERNATIONAL PROMOTION

Massachusetts must be aggressive in promoting itself nationally and internationally as an attractive place to do business. Increasing Massachusetts' exports and promoting Massachusetts as an investment location creates jobs which are critical to economic recovery, and positions us to become the capital of the emerging Atlantic Rim.

One method that has proven very effective is the trade mission. In 1991, we led missions to the Far East and to Mexico. Examples of initial results for participating companies speak for themselves:

- After two follow-up trips, Far East trade mission participant Harvard Design and Mapping (HDM) has signed a contract with a Japanese partner worth several million dollars that will increase revenues by more than five times in the first year alone. HDM's personnel will also increase in the first year, by a factor of three. HDM is making progress on another agreement with a partner in Korea.

- In November, Far East trade mission participant Microway, Inc. embarked on a partnership with computer industry giant Samsung, of Korea, to carry Microway's software. This new agreement will increase Microway's revenues by 25 percent.

- Thermedics, a subsidiary of Far East trade mission participant Thermo Electron Corporation, has been able to tap into a multimillion dollar Asian market for airport security systems. This market is expected to grow 30-40% over the next few years. Agreements reached and in the process will provide several million dollars in new business in this period for Thermedics.

- Digital Equipment Corporation, another Far East trade mission participant, expects to garner nearly $30 million in revenue over the next few years as a result of contacts made during the mission.

- JPS Elastomerics estimates it will receive several million dollars in new sales of roofing materials in Asia over the next two years as a result of leads generated during the Asia trade mission.

- Several environmental businesses secured over $3 million in new contracts and sales leads as a result of a November trade mission to Mexico. The Massachusetts Environmental Business Council also scored a success in developing an unprecedented exchange agreement with CONCAMIN, the most influential business group in Mexico.

Future plans include trade missions to Europe, a follow-up to the Far East, a mission to Israel, and more frequent contacts with Latin America and Canada. We intend to open a Massachusetts Trade Office in Berlin to boost investment promotion, as well as trade and tourism activities.

The fact that international industry leaders such as BASF, NEC, Okidata, KAO Systems, the Norton Company, and more than 500 other foreign-owned enterprises have chosen to relocate and invest in Massachusetts underscores how much the state has to offer foreign companies as a U.S. business location. However, the level of awareness of Massachusetts' benefits is still insufficient. Therefore, we will launch an aggressive advertising and public relations campaign to bring the message of Massachusetts' appeal to out-of-state businesses.

VI. IMPROVING K-12 EDUCATION AND WORKFORCE DEVELOPMENT

Given the well-known distinctive features of the Massachusetts economy, our human resources strategy must be to continually upgrade the quality of jobs in Massachusetts and provide full opportunity for all citizens to equip themselves to fill those jobs.

The business community, particularly those businesses which rely on advanced technology, is adamant that improving K-12 education is one of the most important ways the Commonwealth can help industry. This is particularly true for science and math education. Therefore, we urge the adoption of our education reform initiative, which will establish competency standards for math, science, writing, history, and geography; hold school managers accountable to achieving specific goals; and reshape educational programs to ensure that graduates have competent, marketable skills.

Massachusetts has always attracted and retained people with highly educated minds and entrepreneurial spirit. Where we must improve is in the supply of workers with less education but ample skill in their occupations. In health care, for example, the demand for nurses, physical therapists, medical records technicians, and radiology technicians, among others, has outpaced supply over the last several years. A revitalized Massjobs Council, chaired by Lt. Governor Cellucci, is currently harnessing the efforts of over 35 different programs and 15 Regional Employment Boards into a unified statewide effort to produce these kinds of highly-skilled workers.

VII ENERGY

We will develop a comprehensive state energy plan similar to that undertaken by the U.S. Department of Energy in developing the National Energy Strategy. When completed, the plan will serve as a comprehensive statement of the Administration's energy policy, and will be a blueprint for the management of energy issues. This strategy will represent the Administration's effort to lower costs for industry by reducing the risk of supply disruptions and by allowing competitive forces to bring prices down. The Administration will also help industry by creating a regulatory environment that reduces, rather than increases, costs and that encourages energy efficiency.

VIII. LONG-TERM ECONOMIC DEVELOPMENT PLAN

Projects to assist regional development have proceeded in a scattershot, reactive fashion. There needs to be a strategy focusing on where those projects should be located, and what each region requires to improve. To address this void, the Executive Office of Economic Affairs will oversee the creation of a comprehensive state-wide economic development plan by the end of 1992.

To assist in developing the plan -- and also to ensure the final plan is executed in a fashion that coordinates all the relevant governmental agencies -- the Secretary of Economic Affairs will chair an intergovernmental economic development task force. In addition to Economic Affairs, this group will include the Executive Office of Communities and Development, the Division of Capital Planning and Operations, the Department of Environmental Protection, the Massachusetts Turnpike Authority, the Executive Office of Environmental Affairs, the Executive Office of Transportation and Construction, and the Massachusetts Highway Department.

Regional development requires careful, patient planning. The Weld-Cellucci 1992 Economic Growth Plan achieves the necessary level of thoughtful coordination.

The Weld/Cellucci 1992 Economic Growth Plan

Table of Contents - Appendix

I. Executive Order

II. Legislation

II. Regulatory

III. Constitutional Amendment

IV. EOAs

THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE DEPARTMENT
STATE HOUSE • BOSTON 02133

WILLIAM F. WELD
GOVERNOR

ARGEO PAUL CELLUCCI
LIEUTENANT-GOVERNOR

BY HIS EXCELLENCY

WILLIAM F. WELD
GOVERNOR

EXECUTIVE ORDER NO.

ESTABLISHING AN ADVISORY COMMITTEE ON THE COORDINATION OF ECONOMIC DEVELOPMENT PROGRAMS IN THE COMMONWEALTH

WHEREAS, Massachusetts has recently entered a period of severe economic distress, with an unacceptable level of unemployment and with many areas of the Commonwealth's economic base exhibiting an undesirable rate of growth and, in certain areas of manufacturing, an egregious decline;

WHEREAS, a material factor constraining economic growth and development in the Commonwealth is the lack of a ready availability of financing for small and developing businesses;

WHEREAS, our success at affecting the cost and availability of credit will depend, to a substantial degree, upon the extent to which we advance and implement a comprehensive and coordinated economic development strategy, predicated upon a thorough analysis of our economic strengths and weaknesses, which seeks to create the most favorable environment for economic growth and development;

WHEREAS, critical elements of such a strategy must include, but without limitation, the presentation and advancement of a single, coherent articulation of the Commonwealth's interests before federal agencies with jurisdiction over credit policies and economic development and industrial promotion; the aggressive and coordinated exploitation of the full measure of the existing programs and resources of the Commonwealth's economic development agencies; and tne development of new initiatives which harness market forces and leverage the maximum participation of diverse federal and private resources;

WHEREAS, the Commonwealth has a number of public instrumentalities, authorities and related organizations charged directly or indirectly with supporting economic development, including a wide array of agencies charged with decreasing the cost and expanding the availability of financing, many of which nave ably discharged their public responsibilities since their inception;

WHEREAS, there is currently no effective means by which the Commonwealth can avoid duplication of effort and responsibility by and between its public economic development agencies or provide for the full and effective coordination of effort between and among said agencies;

NOW, THEREFORE, I, William F. Weld, Governor of the Commonwealth of Massachusetts, by virtue of the authority vested in me as Supreme Executive Magistrate, do hereby order as follows:

Section 1. An Advisory Committee on the Coordination of Economic Development Programs in the Commonwealth is hereby established. It shall be the responsibility of the Committee to make recommendations to the Governor relative to ways and means of exploiting the full measure of the expertise and resources of the Commonwealth's public economic development agencies in response to the credit crisis confronting the small and developing businesses in the Commonwealth, and otherwise to most effectively and efficiently advance the Commonwealth's economic development interests, and including but without limitation specific proposals relative to the following:

a. The development of statewide economic development strategic plan which contains an analysis of the strengths and weaknesses of the Massachusetts economy and perceived trends relative thereto and which identifies areas of opportunity for economic growth which would benefit from a more concerted and aggressive application of resources currently or potentially at the disposal of the Commonwealth.

b. The possible consolidation, coordination and augmentation of the purposes, powers and essential governmental functions of the public economic development agencies of the Commonwealth;

c. The most effective presentation and advancement of the Commonwealth's interests before federal agencies with jurisdiction over matters which affect the cost or availability of financing in the Commonwealth;

d. The development of a streamlined, "one-stop shopping" method for the delivery of economic development assistance services in the Commonwealth;

e. The creation of a rapid response mechanism for identifying and aggressively pursuing industrial firms or organizations with an interest in locating or expanding their activities in the Commonwealth; and

f. The feasibility of forming compacts with other states in the New England region relative to the collaborative administration and support of programs in areas such as tourist promotion and education.

Section 2. For the purposes of the affairs of this Committee, the following public agencies, authorities and instrumentalities shall be deemed to be "public economic development agencies":

a. The Massachusetts Industrial Finance Agency;
b. The Massachusetts Health and Educational Facilities Authority;
c. The Massachusetts Community Development Finance Corporation;
d. The Massachusetts Economic Stabilization Fund;
e. The Massachusetts Government Land Bank;
f. The Massachusetts Industrial Service Program;
g. The Massachusetts Product Development Corporation;
h. The Massachusetts Technology Development Corporation;
i. The Bay State Skills Corporation;
j. The Massachusetts Office of Business Development;
k. The Massachusetts Technology Park Corporation;
l. The Massachusetts Housing Finance Agency; and
m. Any other agency, authority or public instrumentality of the Commonwealth determined by the Secretary of Economic Affairs to be engaged in activities similar to aforesaid agencies.

Section 3. The initial composition of the Committee shall be as follows:

a. The Secretary of Economic Affairs who shall serve as chairman;
b. The Secretary of Administration and Finance or his designee;
c. The Commissioner of Banks and Banking;
d. An executive director of a public economic development agency;
e. A private sector representative from the banking industry appointed by the Governor;
f. A private sector representative from the real estate industry to be appointed by the Governor; and
g. Such other members possessing other expertise as the Chairman of the Committee may from time to time recommend to the Governor and as the Governor may thereupon determine to appoint.

In addition, the following elected officials are to be invited to become members of the Committee:

1. The Chairman of the House Committee on Ways and Means; and
2. The Chairman of the Senate Committee on Ways and Means.

Section 4. The Committee is hereby authorized to do any and all things necessary or convenient to carry out the purpose or exercise the powers expressly granted in this order, including but without limitation to conduct audits relative to the performance and financial resources of the public economic development agencies. It is requested that said agencies cooperate fully with the Committee in these matters.

Section 5. The Secretary of Economic Affairs is instructed to assemble the Committee and schedule and staff its meetings (which should commence as soon as practicable). The Committee shall meet as often, and at such times and places, as deemed appropriate by said Secretary. The public economic development agencies are hereby requested to make sufficient staff and resources available to the Committee to enable it to discharge its responsibilities expeditiously.

Section 6. The Committee shall deliver its report and recommendations to the Governor within 90 days of its first meeting. Recommendations shall be those receiving the endorsement of a majority of the Committee. Minority Committee reports or recommendations may accompany any recommendations or reports made by the full Committee.

Given at the Executive Chamber in Boston this 17th day of January in the year of our Lord one thousand nine hundred and ninety-two.

William F. Weld, Governor
Commonwealth of Massachusetts

Michael Joseph Connolly
Secretary of the Commonwealth

GOD SAVE THE COMMONWEALTH OF MASSACHUSETTS

The Commonwealth of Massachusetts

IN THE YEAR ONE THOUSAND NINE HUNDRED AND NINETY- TWO

AN ACT RELATIVE TO ECONOMIC GROWTH.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 1 of chapter 62 of the General Laws, as appearing in the 1990 Official Edition, is hereby amended by striking out subsection (m) and inserting in place thereof the following subsection:-

(m) The terms "capital gain income" and "gain income" shall have the meaning of the term "gains" as given in section sixty-one (a)(3) of the Code; provided, however, that in determining the amount of gain or loss on any sale, exchange, or other disposition of property, the provisions of section six F of this chapter shall be taken into account; and provided, further, that the term "capital loss" does not include any item the deduction of which is, or but for some

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other section would be, prohibited by section two hundred and sixty-seven of the Code.

The term "capital asset" shall have the meaning as given in section one thousand two hundred and twenty-one of the Code and shall be limited to assets which are sold, exchanged or otherwise disposed of by a person while he is subject to taxation under this chapter on any Part A or Part C taxable income; provided, further, that property used in a trade or business within the meaning of section one thousand two hundred and thirty-one (b) of the Code, without regard to the holding period requirement in said section, and property held in connection with a trade or business or transaction entered into for profit within the meaning of section one thousand two hundred and thirty-one (a)(3)(A)(ii)(II) of the Code, without regard to the holding period requirement in said section, shall be treated as if such property were a "capital asset" within the meaning of section one thousand two hundred and twenty-one of the Code.

SECTION 2. Subsection (b) of section 2 of said chapter 62, as so appearing, is hereby amended by striking out, in line 75, the words "two classes" and inserting in place thereof the word:- three Parts.

SECTION 3. Paragraph (1) of subsection (b) of section 2 of said chapter 62, as so appearing, is hereby amended by striking out, in line 76, the words "capital gain net income" and inserting in place thereof the words:- capital gain income.

SECTION 4. Paragraph (1) of subsection (b) of section 2 of said chapter 62, as so appearing, is hereby amended by adding the following subparagraph:-

(C) Gain income from the sale or exchange of capital assets held for more than one year, with such holding period beginning on January 1, 1992 but not including gain income from the sale or exchange of property defined under section four hundred and eight (m)(2) of the Code.

SECTION 5. Subsection (b) of section 2 of said chapter 62, as so appearing, is hereby amended by striking out paragraph (2) and inserting in place thereof the following paragraph:-

(2) Part B gross income shall be Massachusetts gross income not included in Part A or Part C gross income.

SECTION 6. Subsection (b) of section 2 of said chapter 62, as so appearing, is hereby amended by adding the following paragraph:-

(3) Part C gross income shall be capital gain income comprised of the following classes:

(A) Class B gain which equals the gains from the sale or exchange of capital assets held for more than one year but less than or equal to two years.

(B) Class C gain which equals the gains from the sale or exchange of capital assets held for more than two years but less than or equal to three years.

(C) Class D gain which equals the gains from the sale or exchange of capital assets held for more than three years

but less than or equal to four years.

(D) Class E gain which equals the gains from the sale or exchange of capital assets held for more than four years but less than or equal to five years.

(E) Class F gain which equals the gains from the sale or exchange of capital assets held for more than five years but less than or equal to six years.

(F) Class G gain which equals the gains from the sale or exchange of capital assets held for more than six years.

For purposes of this subsection, property acquired prior to January 1, 1993 shall be deemed to have been acquired on January 1, 1992 or on the date of actual acquisition, whichever is later.

SECTION 7. Subsection (c) of section 2 of said chapter 62, as so appearing, is hereby amended by striking out, in line 95, the word "deductions:" and inserting in place thereof the words:- deductions and including the following class of gain income:

SECTION 8. Subsection (c) of section 2 of said chapter 62, as so appearing, is hereby amended by striking out paragraphs (2) & (3) and inserting in place thereof the following paragraphs:-

(2) Losses from the sale or exchange of capital assets held for one year or less, provided, that any such losses which exceed Part A gross income shall be a loss under this paragraph (2) in succeeding taxable years.

(3) A deduction equal to fifty percent of the gain income

from the sale or exchange of property defined under section four hundred and eight (m)(2) of the Code and held for more than one year, after reduction by any losses in paragraph (2).

SECTION 9. Subsection (d) of section 2 of said chapter 62, as so appearing, is hereby amended by adding the following paragraph: -

(L) The deduction allowed by section sixty-two (a)(3) of the Code.

SECTION 10. Section 2 of said chapter 62, as so appearing, is hereby amended by adding the following subsection:-

(e) Part C adjusted gross income shall be the Part C gross income comprised of the following classes as adjusted:

(A) Class B net gain which equals the excess of Class B gains over the losses from the sale or exchange of capital assets held for more than one year but less than or equal to two years.

(B) Class B net loss which equals the excess of losses from the sale or exchange of capital assets held for more than one year but less than or equal to two years over the Class B gains.

(C) Class C net gain which equals the excess of Class C gains over the losses from the sale or exchange of capital assets held for more than two years but less than or equal to three years.

(D) Class C net loss which equals the excess of losses from the sale or exchange of capital assets held for more than

two years but less than or equal to three years over the Class C gains.

(E) Class D net gain which equals the excess of .ass D gains over the losses from the sale or exchange of capital assets held for more than three years but less than or equal to four years.

(F) Class D net loss which equals the excess of losses from the sale or exchange of capital assets held for more than three years but less than or equal to four years over the Class D gains.

(G) Class E net gain which equals the Class E gains over the losses from the sale or exchange of capital assets held for more than four years but less than or equal to five years.

(H) Class E net loss which equals the excess of losses from the sale or exchange of capital assets held for more than four years but less than or equal to five years over the Class E gains.

(I) Class F net gain which equals the Class F gains over the losses from the sale or exchange of capital assets held for more than five years but less than or equal to six years.

(J) Class F net loss which equals the excess of losses from the sale or exchange of capital assets held for more than five years but less than or equal to six years over the Class F gains.

(K) Class G net gain which equals the Class F gains

over the losses from the sale or exchange of capital assets held for more than six years.

(L) Class G net loss which equals the excess of losses from the sale or exchange of capital assets held for more than six years over the Class G gains.

For purposes of this subsection, property acquired prior to January 1, 1993 shall be deemed to have been acquired on January 1, 1992 or on the date of actual acquisition, whichever is later.

Any excess net long-term capital loss from property sold or exchanged prior to January 1, 1993 as determined under paragraph (2) of subsection (c) of section (2) of this chapter in effect prior to January 1, 1993, shall be treated as Class B losses for purposes of paragraphs (A) and (B) of this subsection. Any excess net short-term capital loss from property sold or exchanged prior to January 1, 1993 as determined under paragraph (2) of subsection (c) of section (2) of this chapter in effect prior to January 1, 1993, shall be treated as losses from the sale or exchange of capital assets held for one year or less for purposes of paragraph (2) of subsection (c).

SECTION 11. Subsection (e) of section 2 of said chapter 62, as so appearing, is hereby amended by striking out, in line 176, the letter "(e)" and inserting in place thereof the letter:- (f).

SECTION 12. Subsection (f) of section 2 of said chapter 62, as so appearing, is hereby amended by striking out, in

line 176, the letter "(f)" and inserting in place thereof the letter:- (g).

SECTION 13. Section 2 of said chapter 62, as so appearing, is hereby amended by adding the following subsection:-

(h) The Part C taxable income shall be the Part C adjusted gross income less the deductions and exemptions allowable under Part C of section three.

SECTION 14. Section 2 of said chapter 62, as so appearing, is hereby amended by striking out subsection (g) and inserting in place thereof the following subsection:-

(i) Massachusetts adjusted gross income shall be the sum of Part A adjusted gross income, Part B adjusted gross income and Part C adjusted gross income.

SECTION 15. Section 3 of said chapter 62, as so appearing, is hereby amended by adding the following subsection:-

C. In determining the Part C taxable income, the Part C adjusted gross income shall be reduced by the following deductions and exemptions:

(a) There shall be deducted from the Part C adjusted gross income in determining the Part C taxable income:

(1) Such net amount of the Part C adjusted gross income of trustees or other fiduciaries subject to taxation under sections nine or ten as is payable to or accumulated for persons not inhabitants of the commonwealth to the extent that such income would not be subject to taxation under section

five A if received by a non-resident.

(2) Such net amount of the Part C adjusted gross income of trustees, executors or administrators as is pursuant to the terms of the will, deed or other instrument governing the estate or trust currently payable to or irrevocably set aside for public charitable purposes, or to or for the benefit of any organization or organizations established and operated exclusively for charitable purposes.

(b) An exemption shall be allowed under this section equal to the amount by which the total exemptions allowable under Part B of section three exceed the Part B adjusted gross income less the deductions allowable under paragraph (a) of Part B of section three and the Part A adjusted gross income less the deductions allowable under paragraph (a) of Part A of section three. No exemption shall be allowed hereunder to any married person unless a joint return is filed.

SECTION 16. Section 4 of said chapter 62, as so appearing, is hereby amended by striking out subsection b and inserting in place thereof the following subsection:-

(b) Part B taxable income shall be taxed at the rate of five and three-quarters percent.

SECTION 17. Section 4 of said chapter 62, as so appearing, is hereby amended by adding the following subsection:-

(c) The tax on Part C taxable income shall be equal to the sum of the following:

(1) Class B net gain or net loss multiplied by the

rate of five percent;

(2) Class C net gain or net loss multiplied by the rate of four percent.

(3) Class D net gain or net loss multiplied by the rate of three percent.

(4) Class E net gain or net loss multiplied by the rate of two percent.

(5) Class F net gain or net loss multiplied by the rate of one percent.

(6) Class G net gain or net loss multiplied by the rate of zero percent.

If such sum is a negative amount, such negative amount shall be a Part C credit and shall be applied against any Part A tax imposed on any capital gain as determined under subsection (a) of this section before any credits in section six. If there remains any excess Part C credit after offsetting any such Part A tax, such excess Part C credit shall be carried over without limitation, and in any tax year may first offset any Part C tax as calculated under this subsection (c) before any credits in section six, with any excess Part C credit applied against any Part A tax imposed on any capital gain as determined under subsection (a) of this section before any credits in section six. For purposes of this subsection, capital gain determined under subsection (a) of this section, shall be capital gain reduced by any capital losses in subsection (c).

SECTION 18. Notwithstanding the provisions of section

(a) of section thirty-one A of chapter sixty-three of the General Laws, as appearing in the 1990 Official Edition, as amended by this Act, the credit allowed by said section for the tax year beginning on or after January first, nineteen hundred and ninety-two and ending before December thirty-first, nineteen hundred and ninety-three (in accordance with paragraph twelve of section thirty of said chapter sixty-three) shall be increased by twenty percent of the amount of property qualifying for such credit allowed for such year that is in excess of the amount of property qualifying for such credit allowed for the immediately preceding tax year. All other provisions of said section thirty-one A except subsection (g) shall apply to this additional credit. The provisions of section thirty-two C of chapter sixty-three shall not apply to the increase in credit provided by this section. Any corporation to which the increase in credit provided by this section is allowed may carry over and apply to its excise for anyone or more of the next succeeding five tax years the portion, as reduced from year to year, of such increase which exceeds its excise for the tax year. In determining the amount of additional credit allowable under this section, the commissioner may aggregate the qualifying property acquired, constructed, reconstructed or erected by all corporations that are members of a controlled group of corporations and of all entities, whether or not incorporated, that are under common control as defined in subsection (f) of section forty-one of the Federal Internal Revenue Code and may

make adjustments for all such property acquired as a result of (i) acquisitions as defined in said subsection (f) of section forty-one of said Code and (ii) reorganizations as defined in section three hundred and sixty-eight of said Code.

SECTION 19. Said chapter 63, as so appearing, is hereby amended by striking out in its entirety section 31C and inserting the following new section:-

Section 31C. A corporation shall be allowed a credit as hereinafter provided against its excise due under this chapter for its tax year beginning on or after January first, nineteen hundred and ninety-two an ending before December thirty-first, nineteen hundred and ninety-three. The amount of the credit shall be determined by the amount of the increase in the adjusted Massachusetts payroll costs for the tax year of such credit over such payroll costs for the tax year which began on or after January first, nineteen hundred and ninety and ended before December thirty-first, nineteen hundred and ninety-one ("the base year"). The Massachusetts payroll costs are those costs of compensation and all benefits attributable to employees which are included or includible in the numerator of the payroll factor of the income apportionment formula under the provisions of section thirty-eight of this chapter. Massachusetts payroll costs shall be adjusted by deducting therefrom the following to the extent included therein:

(i) all compensation and benefits paid to employees who owned five percent or more of the combined voting stock of the corporation;

(ii) all compensation and benefits in excess of $100,000 paid to any employee;

(iii) all compensation and benefits paid to employees who were also directors of the corporation;

(iv) all compensation paid as bonuses;

(v) all deferred compensation; and

(vi) all benefit costs, including, but not limited to, health benefits and health insurance premiums, life insurance premiums, employer contributions under the Federal Insurance Contributions Act, contributions for retirement plans, unemployment and workers' compensation insurance premiums or benefits.

The credit shall be the percentage hereinafter specified of the excise determined after reducing said excise by all other credits allowable to the corporation under this chapter, except the credit under section thirty-one H:-

Excess of adjusted Massachusetts payroll costs over base year payroll costs	Percentage of excise
15% or more, but less than 30%	5%
30% or more, but less than 45%	10%
45% or more, but less than 60%	25%
60% or more, but less than 75%	50%
75% or more, but less than 100%	75%
100% or more	90%

If the corporation had no Massachusetts employees during the tax year which began on or after January first,

nineteen hundred and ninety and ended before December thirty-first, nineteen hundred and ninety-one or is unable to substantiate the amount of its adjusted Massachusetts payroll costs for such year, no credit shall be allowed. In determining the amount of credit allowable under this section, the commissioner may aggregate adjusted Massachusetts payroll costs for all corporations that are members of a controlled group of corporations and for all entities, whether or not incorporated, that are under common control as defined in subsection (f) of section forty-one of the Federal Internal Revenue Code. In aggregating such payroll costs, the commissioner may also take into account acquisitions, as defined in subsection (f) of section forty-one (f) of said Code, and reorganizations, as defined in section three hundred sixty-eight of said Code.

The credit allowed under this section shall not reduce the excise to less than the amount due under subsection (b) of section thirty-two or subsection (b) of section thirty-nine or under any act in addition thereto. The provisions of section thirty-two C of this chapter shall not apply to the credit allowed by this section. A corporation claiming a credit under this section shall furnish such information relative to the credit as may be required by the commissioner in a form approved by him, and the commissioner shall promulgate such regulations as are necessary to implement this section.

SECTION 20. Said chapter 63, as so appearing, is hereby amended by adding the following section after section

31G:-

Section 31H. A corporation shall be allowed a credit as hereinafter provided against its excise due under this chapter for its taxable year beginning on or after January first, nineteen hundred and ninety-two and ending before December thirty-first, nineteen hundred and ninety-three. The credit hereunder shall be allowed only if such corporation qualifies for a credit for such tax year under section thirty-one C. The amount of the credit shall be equal to that amount of qualifying job training expenses and qualifying child care expenses that is not in excess of ten percent of the amount by which its excise is reduced on account of the credit allowed under section thirty-one C of this chapter for such tax year. Qualifying job training expenses are employer-provided or employer-sponsored expenses incurred for the training of employees in Massachusetts, but are limited to expenses for teachers and instructional materials and shall not include expenses for the construction, acquisition or maintenance of equipment or facilities used for training purposes. Qualifying child care expenses are employer-provided or employer-sponsored expenses for the care in Massachusetts of children of employees which expenses are not reimbursed by tuition, government grant or otherwise and do not include expenses for the construction, acquisition or maintenance of equipment or facilities used for child care purposes.

The credit allowed under this section shall not reduce the excise to less than the amount due under subsection (b) of

section thirty-two or subsection (b) of section thirty-nine and under any act in addition thereto. A corporation claiming a credit under this section shall furnish such information relative to the credit as may be requested by the commissioner in a form approved by him, and the commissioner shall promulgate such regulations as are necessary to implement this section.

SECTION 21. Sections one through fifteen and section seventeen shall apply to taxable years beginning on or after January first, nineteen hundred and ninety-three. Section sixteen of this act shall apply to taxable years beginning on or after January first, nineteen hundred and ninety-two. Sections eighteen, nineteen and twenty shall take effect upon passage.

The Commonwealth of Massachusetts

IN THE YEAR ONE THOUSAND NINE HUNDRED AND NINETY- TWO

AN ACT RELATIVE TO REGULATORY REFORM

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. (Executive Office of Administration and Finance-Department of Revenue)

Section 1. Subsection (a) of section 14 of chapter 62B of the General Laws, as appearing in the 1990 Official Edition, is hereby amended by striking out, in line 4, the words "rate of eighteen per cent per annum" and inserting in place thereof the following words:- rate established under section thirty-two of chapter 62C.

NOTE. — Use ONE side of paper ONLY. DOUBLE SPACE. Insert additional leaves, if necessary.

Section 2. Chapter 62C of the General Laws, as appearing in the 1990 Official Edition, is hereby amended by striking out, in its entirety, section 32, and inserting in place thereof the following section:-

Section 32. (a) Taxes shall be due and payable at the time when the return is required to be filed, determined without regard to any extension of time for filing the return. If any amount of tax is not paid to the commissioner on or before its statutory due date, there shall be added to the tax interest at the rate of the Federal short-term rate determined under section 6621(b) of the Internal Revenue Code, as amended and in effect for the taxable year, plus four percentage points, compounded daily.

(b) Taxes assessed under sections twenty-six, twenty-seven and thirty, and taxes and penalties assessed under section twenty-eight shall include interest as provided in paragraph (a) of this section to the date when the tax so assessed, or any unpaid balance thereof, is required to be paid, which shall be the thirtieth day following the date of the notice of tax due.

(c) A penalty assessed under subsection (a) of section thirty-three of this chapter shall include interest as provided in paragraph (a) of this section from the statutory due date including extensions to the date of payment of such penalty. A penalty assessed under subsections (b) or (c) of said section thirty-three shall include interest as provided in paragraph (a)

of this section from a date of thirty-one days after the date of the notice of assessment to the date of payment of such penalty.

Section 3. Section 33 of said chapter 62C, as so appearing, is hereby amended by striking out subsection (a), in its entirety, and inserting in place thereof the following subsection:-

(a) If any return is not filed with the commissioner on or before its due date or within any extension of time granted by him, there shall be added to the tax a penalty of two percent of the amount required to be shown as the tax on such return for each month or fraction thereof during which such failure continues, not exceeding, in the aggregate, twenty-five percent of said amount; provided, however, that such penalty shall not be less than fifty dollars, whether or not any tax is required to be shown on such return.

Section 4. Section 37A of chapter 62C of the General Laws, as appearing in the 1990 Official Edition, is hereby amended by striking out, in lines 1 and 2, the words "Notwithstanding any other provision of law, prior to a court judgment or decision by the appellate tax board,".

Section 5. Subsection (a) of section 37A of said chapter 62C, as so appearing, is hereby amended by striking out, in line 6, the word "either".

Section 6. Subsection (a) of section 37A of said chapter 62C, as so appearing, is hereby further amended by striking out, in line 7, the words "or as to the taxpayer's liability".

Section 7. Section 37A of said chapter 62C, as so appearing, is hereby amended by striking out, in line 37, the word "case", and inserting in place thereof the following words:- matter which is the subject of such agreement,.

Section 8. Said chapter 62C, as so appearing, is hereby amended by adding the following new section after section 37B:-

Section 37C. The commissioner may accept a lesser amount than the proposed or assessed tax liability in final and full settlement thereof; provided, however, that the following conditions are met:

(a) The commissioner finds that there is significant doubt as to the taxpayer's liability, taking into account potential hazards of litigation; and

(b) The commissioner and the taxpayer agree in writing to the settlement.

After the settlement agreement is signed, neither the taxpayer nor the commissioner shall be permitted to reopen the matter or matters which are the subject of such agreement, except by reason of (1) fraud, (2) misrepresentation of a material fact, or (3) mutual mistake of a material fact sufficient to cause a contract to be reformed or set aside.

The commissioner may promulgate regulations to carry out the provisions of this section, including the establishment of procedures for review of settlement agreements.

Section 9. Section 40 of said chapter 62C, as so appearing, is hereby amended by striking out, in lines 6 and 7, the words

"rate of twelve percent per annum, or adjusted rate as is established under section thirty-two" and inserting in place thereof the following words:- rate established under section thirty-two of this chapter.

Section 10. Subsection (a) of section 3 of chapter 63B of the General Laws, as appearing in the 1990 Official Edition, is hereby amended by striking out, in line 5, the words "rate of eighteen percent per annum" and inserting in place thereof the following words:- rate established under section thirty-two of chapter 62C.

Section 11. Sections four through eight, inclusive, of SECTION 1 of this act shall apply to all proposed assessments and assessments, whether proposed or made before or after the effective date of this act. Sections one, two, nine and ten of this act shall apply to interest accruing on or after July 1, 1992. Section three of this act shall take effect on July 1, 1992. The total amount of interest, penalties and additions to tax accrued but unpaid as of June 30, 1992, whether assessed or not, shall be combined with all taxes accrued but unpaid as of June 30, 1992, whether assessed or not, for purposes of determining the amount to which daily compounding shall apply; provided, however, that such daily compounding shall not apply to any penalty imposed under section 33(b) of chapter 62C until a date thirty-one days after the date of notice of assessment o such penalty.

SECTION 2. (Executive Office of Administration & Finance - Massachusetts Commission Against Discrimination)

Section 1. Section 9 of chapter 151B of the General Laws, as appearing in the 1990 Official Edition, is hereby amended by inserting, after the second sentence of the second paragraph thereof, in line 31, the following sentence:- The commission shall in like manner dismiss any complaint before it upon notice that a civil action has been brought in the United States District Court, provided, however, that the remedies available to the plaintiff in said civil action are wholly equivalent to those afforded the plaintiff under state law.

SECTION 3. (Executive Office of Administration & Finance - Department of Procurement and General Services)

Section 1. Section 22 of chapter 7 of the General Laws, as amended by section 1 of chapter 477 of the Acts of 1991, is hereby further amended by striking out, in line 22, the words "one thousand" and inserting in place thereof the words:- five thousand.

Section 2. Section 22 of chapter 7 of the General Laws, as appearing in the 1990 Official Edition, is hereby further amended by inserting, after the second sentence of the first paragraph thereof, in line 9, the following new sentence:- Such rules, regulations and orders shall further include, so far as practicable, provisions for the imposing on vendors of reasonable fees for the privilege of submitting bids/proposals in response to public solicitations to assist in defraying the costs of printing, issuing, mailing and processing public procurements.

Section 3. Section 27B of Chapter 29 of the General Laws, as appearing in the 1990 Official Edition, is hereby amended by inserting the following sentence at the end of the second full paragraph thereof, in line 19:- Such rules and regulations may provide for the lease or purchase of information technology, including data processing, telecommunications or reproduction equipment or systems without advertising or competitive procurement procedures, where the amount involved will not exceed ten thousand dollars, when, in the judgment of the state purchasing agent, it is expedient.

Section 4. Section 27B of chapter 29 of the General Laws, as appearing in the 1990 Official Edition, is hereby amended by inserting, after the last paragraph thereof the following new paragraph:-

The commissioner of administration shall establish rules and regulations governing the imposition on vendors of reasonable fees for the privilege of submitting bids/proposals in response to public solicitations to assist in defraying the costs of printing, issuing, mailing and processing public procurements.

Section 5. Section 36A of chapter 30 of the General Laws, as amended by section 2 of chapter 477 of the Acts of 1991, is hereby further amended by striking out, in line 10, the words "fifteen hundred" and inserting in place thereof the words:- two thousand; and by inserting, at the end of said section, in line 8, the following words:- provided that the commissioner of

administration may delegate in writing the approval authority to any department or agency for a period not to exceed three years.

SECTION 4. (Executive Office of Administration & Finance - Division of Capital Planning and Operations)

Section 1. Paragraph (b) of section 38A1/2 of chapter 7 of the General Laws, as appearing in the 1990 Official Edition, is hereby amended by deleting from the definition of "Design services", in lines 45 and 46, the words "surveys, soil tests, cost estimates".

Section 2. Section 38C of said chapter 7 of the General Laws, as so appearing, is hereby amended by adding, in line 74, after the word "forty-nine", the following clause:- ; or (iv) an alternative method is employed pursuant to section forty-four A of chapter one hundred forty-nine.

Section 3. Paragraph (a) of section 38E of said chapter 7 of the General Laws, as so appearing, is hereby amended by deleting, in lines 6 and 7, the words "surveys, soil testing, cost estimates".

Section 4. Paragraph (f) of said section 38E of said chapter 7 of the General Laws, as so appearing, is hereby amended by deleting, in line 47, the words "surveys, soil tests, cost estimates".

Section 5. Section 38H of said chapter 7 of the General Laws, as so appearing, is hereby amended by striking out paragraph (d) and by redesignating the remaining paragraphs (e), (f), (g), (h), (i), and (j) as (d), (e), (f), (g), (h), and (i), respectively.

Section 6. Section 40E of said chapter 7 of the General Laws, as so appearing, is hereby amended by deleting the last paragraph thereof and inserting in its place the following paragraph:-

For the purposes of sections forty F through forty L, inclusive, the term "emergency" shall mean any situation caused by unforeseen circumstances which render real property used by a state agency, or in the process of being acquired for use by a state agency, unusable or unavailable for the purposes intended and which create an immediate need for other real property to preserve the health or safety of persons or property or the delivery of an essential governmental service.

Section 7. Section 40F of said chapter 7 of the General Laws, as so appearing, is hereby amended by deleting the words "first consideration" in the first sentence of the third paragraph and inserting in place thereof the following word:- preference.

Section 8. Section 40F of said chapter 7 of the General Laws, as so appearing, is hereby further amended by deleting the fourth sentence of the sixth paragraph and inserting in place thereof the following sentence:- The commissioner shall notify the house and senate committees on ways and means and the representatives to the general court from the city or town in which such real property is located within thirty days from the final authorization of any transfer which does not require the approval of the general court, and such transfer shall be made

only when the general court is in session except as provided hereafter.

Section 9. Section 40F of said chapter 7 of the General Laws, as so appearing, is hereby further amended by deleting the seventh paragraph and inserting in its place the following paragraph:-

The commissioner may, after notification to and with the advice of the executive heads of state agencies and secretaries of the executive offices, determine that real property is not needed for the use of any state agency. If he or she determines that such property is surplus to both the current and foreseeable needs of state agencies, the commissioner shall determine whether any other public agency has a current or foreseeable direct public use for the property. For the purposes of determining whether property is surplus to direct public use, direct public use is defined in this section as use of property for a public agency's own operations. The commissioner shall provide written notice, for each city or town in which the property is located, to the city manager in the case of a city under a Plan E form of government, the mayor and city council in the case of all other cities, the chairman of the board of selectmen in the case of a town, the county commissioners, the regional planning agency, and the members of the general court. The commissioner shall set forth in such notice: a description of the property; a declaration that the property is surplus to the needs of state agencies and that, subject to the approval of the commissioner,

the property is available to any other public agency for a direct public use; and a statement that, if so requested by any public official or body entitled under this section to receive such notice, a public hearing will be conducted in the city or town where such property is located, to assist the commissioner in determining whether any other public agency has a current or foreseeable direct public use for the property. Following such hearing, if any, but in no event earlier than thirty days following the notice, the commissioner shall determine whether any other public agency has a current or foreseeable direct public use for the property.

Section 10. Section 40F of said chapter 7 of the General Laws, as so appearing, is hereby further amended by inserting after the seventh paragraph thereof the following new paragraph:-

The commissioner may, with the written approval of the commissioner of administration, enter into agreements for the direct public use of real property determined to be surplus to the current and foreseeable needs of state agencies by public agencies other than state agencies. Such agreements shall be for a term not to exceed five years, unless a longer term is authorized by the general court, and shall prohibit subsequent transfer of interest in the property by the public agency to another party except for leases from local housing authorities to public housing tenants. Such agreements shall also provide that such interest as is the subject of the disposition, shall revert to the commonwealth in the event the property is no longer

utilized for such direct public use. The commissioner shall notify the house and senate committees on ways and means and the joint committee on state administration thirty days prior to the final authorization of any such agreement. The general court shall be in session during such notice period.

Section 11. Section 40F of said chapter 7 of the General Laws, as so appearing, is hereby further amended by deleting the eighth paragraph and inserting in place thereof the following paragraph:-

When property is determined to be surplus to the current needs of state agencies and current direct public uses but not to foreseeable needs of state agencies or foreseeable direct public uses, the commissioner shall take such action as is necessary to ensure that any disposition of the property is temporary and maintains the commissioner's ability to make such property available to a state agency or other public agency at such time as it is needed.

Section 12. Section 40F of said chapter 7 of the General Laws, as so appearing, is hereby further amended by deleting the ninth paragraph and inserting in place thereof the following paragraph:-

If the commissioner determines that the property is surplus to the current and foreseeable needs of state agencies and current and foreseeable direct public uses as defined above, he or she shall declare that the property is surplus.

Section 13. Section 40F of said chapter 7 of the General Laws, as so appearing, is hereby further amended by deleting the third sentence of the tenth paragraph and inserting in place thereof the following two sentences:- The commissioner shall prepare a preliminary report on his or her findings which shall identify restrictions, if any, on the property's use and development necessary to comply with established state and local plans and policies and which shall include both his/her recommendation and those of the advisory committee, if established, for reuse restrictions for the property. This preliminary report shall be sent to the house and senate committees on ways and means.

Section 14. Section 40F of said chapter 7 of the General Laws, as so appearing, is hereby further amended by deleting the eleventh paragraph and inserting in place thereof the following paragraph:-

The commissioner shall conduct a public hearing in the locality in which the property is located to consider potential reuses and reuse restrictions for the surplus property and to review the commissioner's preliminary report if the property exceeds two acres or if the commissioner determines that a hearing should be held for a smaller parcel. If he or she conducts a hearing, the commissioner shall provide notice in the central register. The public hearing shall be held no sooner than thirty days and no later that thirty-five days after the notice is published in the central register. A notice of the

public hearing shall also be placed, at least once each week for four consecutive weeks preceding the hearing, in newspapers with sufficient circulation to inform the people in the affected locality. The commissioner shall not submit to the general court a request for authority to dispose of surplus real property earlier than thirty days after the date of such public hearing.

Section 15. Section 40F of said chapter 7 of the General Laws, as so appearing, is hereby further amended by deleting the twelfth paragraph thereof.

Section 16. Section 40F of said chapter 7 of the General Laws, as so appearing, is hereby further amended by deleting the fourteenth paragraph and inserting in place thereof the following paragraph:-

The commissioner may, with the approval of the commissioner of administration, request from the general court authorization to dispose of surplus state real property. Accompanying the request for authorization to dispose of property, the commissioner shall submit his or her final report, including a description of the property, its current use, structures and approximate metes and bounds, the value of the property, recommended restrictions, if any, on reuses of the property, and an outline of the division's reasons for pursuing such conveyance or transfer. The commissioner shall also request authorization to negotiate real-property disposition agreements with parties to be selected by the commissioner after he or she evaluates competitive proposals. Disposition agreements subsequently

negotiated by the commissioner shall be consistent with any reuse restrictions approved by the general court.

Section 17. Section 40F of said chapter 7 of the General Laws, as so appearing, is hereby further amended by inserting after the fourteenth paragraph thereof the following new paragraph:-

The commissioner shall ensure that any rental agreement and, in the case of a conveyance, the deed and/or separate disposition agreement, as deemed appropriate by the commissioner, shall set forth all such reuse restrictions and shall provide for effective remedies on behalf of the commonwealth, including, if deemed appropriate by the commissioner, a provision that title to the property, or such lesser interest as is subject of the disposition agreement, shall revert to the commonwealth in the event of a violation of any such reuse restriction.

Section 18. Section 40F of said chapter 7 of the General Laws, as so appearing, is hereby further amended by deleting the seventeenth paragraph and inserting in place thereof the following paragraph:-

The commissioner shall develop regulations governing the conditions under which a public agency, including but not limited to the government land bank, receives title to surplus property for other than direct public use.

Section 19. Section 40F of said chapter 7 of the General Laws, as so appearing, is hereby further amended by deleting the

last paragraph and inserting in place thereof the following six paragraphs:-

When authorized by the general court to sell, rent or otherwise dispose of real property, the commissioner shall proceed in accordance with the provisions of this section unless otherwise authorized by the terms of such authorization.

Notwithstanding the provisions of this section or sections forty H and forty I hereof, easements and rights for access and egress, for utilities, or for some other purpose which furthers the mission of a state or public agency, (1) required by a public agency on, over or through real property held in the name of the commonwealth, (2) required by a state agency on, over or through real property held in the name of a public agency, or (3) required by a state agency on, over or through property held in the name of the commonwealth and under the control of another state agency or other state agencies, shall be granted, conveyed, acquired or transferred upon terms and conditions and for such consideration as determined by the commissioner in consultation with the executive heads of state agencies.

Notwithstanding the provisions of this section or sections forty H and forty I hereof, easements and rights for access and egress or for utilities on, over, or through real property held in the name of the commonwealth, required by a private individual or entity which holds record title to real property abutting or adjacent to state-owned real property, shall be granted, conveyed or transferred upon terms and conditions and for such

consideration as determined by the commissioner in consultation with the executive head of each state agency involved.

The commissioner shall notify the house and senate committees on ways and means and the joint committee on state administration at least sixty days before any easement or right is granted, conveyed, acquired, or transferred without the prior approval of the general court. The general court shall be in session during such notice period.

No easements or rights taken or acquired for purposes authorized by article ninety-seven of the Amendments to the Constitution of the commonwealth, or devoted to the public use, shall be used for other purposes pursuant to this section except in accordance with the laws and the Constitution of the commonwealth.

No agreement for the rental or other disposition of state-owned real property and no deed, executed by or on behalf of the commonwealth, shall be valid unless such agreement or deed contains the following declaration signed by the commissioner:

> The undersigned certifies under penalties of perjury that I fully complied with the applicable provisions of Sections forty F and forty H of Chapter 7 of the General Laws in connection with the property described herein.

_____

Commissioner of DCPO

Date: _____

The commissioner shall maintain, for a period of at least six years following enactment of an authorization by the general court to dispose of real property, a file containing a copy of each document necessary to establish fulfillment of the requirements of this section. Such file shall be open to public inspection.

Section 20. Chapter 7 of the General Laws, as so appearing, is hereby amended by deleting section forty F1/2.

Section 21. Section 40G of said chapter 7 of the General Laws, as so appearing, is hereby amended by deleting the first paragraph thereof.

Section 22. Section 40G of said chapter 7 of the General Laws, as so appearing, is hereby further amended by deleting the second sentence of the second paragraph thereof.

Section 23. Section 40G of said chapter 7 of the General Laws, as so appearing, is hereby further amended by deleting the word "six" in the third paragraph, in line 82, and inserting in place thereof the following word:- twelve.

Section 24. Section 40G of said chapter 7 of the General Laws, as so appearing, is hereby further amended by deleting the fourth paragraph thereof and inserting in its place the following paragraph:-

The commissioner shall notify the house and senate committees on ways and means thirty days from the final authorization of any such rental agreement.

Section 25. Section 40H of said chapter 7 of the General Laws, as appearing in the 1990 Official Edition, is hereby amended by inserting the following clause after the last word of the second paragraph thereof:- ; or (3) in the case of rental agreements entered into on behalf of state agencies obligating the commonwealth to pay rent or other charges totaling less than twenty-five thousand dollars during the term of the agreement, provided that reasonable efforts are made to seek competitive proposals according to procedures established by the commissioner.

Section 26. Section 40I of said chapter 7 of the General Laws, as appearing in the 1990 Official Edition, is hereby amended by deleting the words "one hundred and twenty" wherever they appear in said section and inserting in place thereof in each instance the following word:- ninety.

Section 27. Said section 40I of said chapter 7 of the General Laws, as so appearing, is hereby further amended by deleting the word "sixty" in the fourth sentence and inserting in place thereof the following word:- thirty.

Section 28. Section 42B of said chapter 7 of the General Laws, as so appearing, is hereby amended by deleting the second sentence of the second paragraph and inserting in place thereof the following sentence:- The director shall also recommend in writing to the commissioner the method for procuring design and construction services when an alternative construction method is

recommended and shall state in writing his or her reasons for such recommendation.

Section 29. Section 42C of said chapter 7 of the General Laws, as so appearing, is hereby amended by deleting from the last sentence of the third paragraph the words "approved by the legislature" and inserting in place thereof the following words:- prescribed by the commissioner.

Section 30. Section 7E of chapter 29 of the General Laws, as appearing in the 1990 Official Edition, is hereby amended by striking out the third, fourth, and fifth sentences of the second paragraph.

Section 31. Subsection (3) of section 39F of chapter 30 of the General Laws, as appearing in the 1990 Official Edition, is hereby amended by striking out, in lines 136 and 137, the words "who files a sub-bid and receives a subcontract as a result of that filed sub-bid" and inserting in place thereof the following words:- who is listed as a subcontractor pursuant to section forty-four F of chapter one hundred forty-nine and receives a subcontract as a result.

Section 32. Section 39K of said chapter 30 of the General Laws, as so appearing, is hereby amended by striking out, in lines 74 and 75, the words "filed subtrade and each sub-subtrade listed in sub-bid form as required by specifications" and inserting in place thereof the following words:- subtrade and each sub-subtrade employed on the project.

Section 33. Section 39L of said chapter 30 of the General Laws, as so appearing, is hereby amended by striking out, in line 3, the words "bids or sub-bids" and inserting in place thereof the following words:- or bids.

Section 34. Section 39M of said chapter 30 of the General Laws, as so appearing, is hereby amended by striking out the first sentence of paragraph (a) thereof and inserting in place thereof the following:- Every contract for the construction, reconstruction, alteration, remodeling, or repair of any public work, or for the purchase of any material, as hereinafter defined, by the commonwealth, or political subdivision thereof, or by any county, city, town, district, or housing authority, and estimated by the awarding authority to cost more than an amount to be known as "the 39M threshold," and every contract for the construction, reconstruction, installation, demolition, maintenance or repair of any building by a public agency, as defined by subsection one of section forty-four A of chapter one hundred and forty-nine, estimated to cost more than the 39M threshold but not more than the 44A threshold as defined by subsection two of section forty-four A of chapter one hundred and forty-nine, shall be awarded to the lowest responsible and eligible bidder on the basis of competitive bids publicly opened and read by such awarding authority forthwith upon expiration of the time for the filing thereof; provided, however, that such awarding authority may reject any and all bids, if it is in the public interest to do so. The 39M threshold shall be fifty

thousand dollars prior to the first business day of July, 1993. Beginning in 1993 the 39M threshold shall be adjusted annually on the first business day of each July in accordance with the percentage change in the cost of building construction over the previous year as determined by the commissioner of the division of capital planning and operations from available building cost indexes, provided that notice of any increase in the 39M threshold shall be filed immediately with the house and senate committees on ways and means.

Section 35. Said section 39M of Chapter 30 of the General Laws, as so appearing, is hereby further amended by deleting from paragraph (d), in lines 92 through 95, the words ", and (4) to any contract of not more than twenty-five thousand dollars awarded by a governmental body, as defined by section two of chapter thirty B, in accordance with the provisions of section five of said chapter thirty B".

Section 36. Section 44A of chapter 149, as appearing in the 1990 Official Edition, is hereby amended by striking the first sentence of the first paragraph of subsection (2) and inserting in its place the following sentence:- (2) Every contract for the construction, reconstruction, installation, demolition, maintenance or repair of any building by a public agency estimated to cost more than an amount to be known as "the 44A threshold", except for a pumping station to be constructed as an integral part of a sewer construction or water construction project bid under the provisions of section thirty-nine M of

chapter thirty, shall be awarded to the lowest responsible and eligible general bidder on the basis of competitive bids in accordance with the procedure set forth in sections forty-four A to forty-four H of this chapter, inclusive. The 44A threshold shall be one hundred thousand dollars prior to the first business day of July, 1993. Beginning in 1993 the 44A threshold shall be adjusted annually on the first business day of each July in accordance with the percentage change in the cost of building construction over the previous year as determined by the commissioner of the division of capital planning and operations from available building cost indexes, provided that notice of any increase in the 44A threshold shall be filed immediately with the house and senate committees on ways and means.

Section 37. Subsection (2) of section 44A of said chapter 149 of the General Laws, as so appearing, is hereby amended by striking out the second sentence of the first paragraph and inserting in place thereof the following sentences:- When the commissioner has determined that an alternative method of procurement, including but not limited to turnkey, design/build, or construction management, is in the best interest of the commonwealth, he or she shall notify the house and senate committees on ways and means of the method recommended and the reasons therefor, and the committees on ways and means shall have thirty days in which to approve or disapprove of the method of procurement recommended by the commissioner. In the event that the committees on ways and means do not respond within thirty

days of notification by the commissioner, the commissioner may employ the method of procurement he or she has recommended provided that it is compatible, to the extent feasible, with the policies and procedures for selection of designers in sections thirty-eight A 1/2 to thirty-eight O, inclusive, and the policies and procedures for selection of contractors in sections forty-four A to forty-four H of this chapter.

Section 38. Subsection (2) of section 44B of said chapter 149 of the General Laws, as so appearing, is hereby amended by striking out, in lines 24 and 25, the words "and every sub-bid submitted in connection with such a contract for a subtrade pursuant to section forty-four F".

Section 39. Section 44B of said chapter 149 of the General Laws, as so appearing, is hereby amended by striking out, in lines 58 through 82, subsection (4) thereof.

Section 40. Subsection (5) of section 44B of said chapter 149 of the General Laws, as so appearing, is hereby amended by striking out, in line 83, the word "provisions" and inserting in place thereof the word:- provision; by striking out, in line 84, the words "and (4)"; and by renumbering subsection (5) by striking out, in line 83, "(5)" and inserting in place thereof:- (4).

Section 41. Subsection (1) of section 44D of said chapter 149 of the General Laws, as so appearing, is hereby amended by striking out the last sentence of paragraph (a) and inserting in place thereof the following sentences:- Any bid or offer

submitted without the appropriate certificate and update statement shall be invalid unless the failure to submit the appropriate certificate and update statement results from excusable error, the appropriate certificate and update statement are submitted before the end of the second business day following the last day on which bids or offers were to be received, and the certificate of eligibility was valid on the last day on which bids or offers were to be received. The awarding authority may, however, reject any bid or offer submitted without the appropriate certificate and update statement if delaying the contract award by two business days would be harmful to the public interest.

Section 42. Subsection (2) of section 44D of said chapter 149 of the General Laws, as so appearing, is hereby amended by striking out, in lines 193 and 194, the words "over the past five years or on the twenty projects most recently completed".

Section 43. Subsection (3) of section 44D of said chapter 149 of the General Laws, as so appearing, is hereby amended by striking out, in line 223, the words "over the past five years".

Section 44. Subsection (8) of section 44D of said chapter 149 of the General Laws, as so appearing, is hereby amended by striking out, in line 293, the word "sub-bidders" and inserting in place thereof the following word:- subcontractors.

Section 45. Subsection (1) of section 44E of said chapter 149 of the General Laws, as so appearing, is hereby amended by striking out, in lines 2 and 3, the words "and whenever sub-bids

are invited in connection with such a contract subject to section forty-four F (1)".

Section 46. Subsection (1) of said section 44E of chapter 149 of the General Laws, as so appearing, is hereby further amended by striking out, in lines 5 and 6, the words "and one place for filing such sub-bids, which need not be the same place".

Section 47. Subsection (1) of said section 44E of chapter 149 of the General Laws, as so appearing, is hereby further amended by striking out, in line 8, the words "or sub-bid".

Section 48. Subsection (1) of said section 44E of chapter 149 of the General Laws, as so appearing, is hereby further amended by striking out the second sentence of the second paragraph.

Section 49. Subsection (2) of said section 44E of chapter 149 of the General Laws, as so appearing, is hereby amended by striking out provision D, in lines 35-60, and inserting in place thereof the following paragraph:-

The undersigned agrees to pay the premiums for performance and payment bonds required by applicable provisions of the General Laws and by this contract and that all of the cost of all such premiums is included in the amount set forth in Section C of this bid.

Section 50. Subsection (2) of said section 44E of chapter 149 of the General Laws, as so appearing, is hereby further

amended by striking "E." in line 61 and inserting in place thereof:- D.

Section 51. Subsection (3) of said section 44E of chapter 149 of the General Laws, as so appearing, is hereby amended by striking out, in lines 90, 91, and 92, the words "and shall include the names of sub-bidders and the amount of their sub-bids;".

Section 52. Subsection (3) of said section 44E of chapter 149 of the General Laws, as so appearing, is hereby further amended by striking out the third paragraph and inserting in place thereof the following paragraph:-

The bid price shall be the price set forth in a clearly designated place on the bid form for that purpose. No general bid shall be rejected because the plans and specifications do not accompany the bid or are not submitted with the bid.

Section 53. Said chapter 149 of the General Laws, as so appearing, is hereby amended by striking out section 44F and by inserting in place thereof the following new section 44F:-

Section 44F. (1) Every contract subject to section forty-four A of this chapter shall include specifications and, if deemed necessary or convenient by the awarding authority, plans detailing all labor and materials to be furnished thereunder.

(2) Every bid submitted pursuant to section forty-four E of this chapter shall be accompanied by a list of all subcontractors being proposed to perform the following classes of work: (a) roofing and flashing, (b) metal windows, (c) waterproofing,

damp-proofing, and caulking, (d) miscellaneous and ornamental iron, (e) lathing and plastering, (f) acoustical tile, (g) marble, (h) tile, (i) terrazzo, (j) resilient floors, (k) glass and glazing, (l) painting, (m) plumbing, (n) heating, ventilating and air conditioning, (o) electrical work, including direct electrical radiation and heating, (p) elevators, (q) masonry work, and (r) any other class of work designated by the awarding authority. The list shall include the name of the subcontractor, the class of work for which that subcontractor shall be responsible, the price for which the subcontractor will perform the subtrade work, and whether the general contractor has required the subcontractor to provide performance and/or payment bonds. The general contractor shall not remove or replace listed subcontractors after opening of the general bid, except with the approval of the awarding authority.

Section 54. Subsection (2) of section 44J of said chapter 149 of the General Laws, as so appearing, is hereby amended by striking out the second sentence thereof.

Section 55. Subsection (4) of section 44J of said chapter 149 of the General Laws, as so appearing, is hereby amended by striking out, in line 52, the words "and filed sub-bids".

SECTION 5. (Executive Office of Communities and Development - Department of Community Affairs)

Section 1. Chapter 23B of the General Laws, as appearing in the 1990 Official Edition, is hereby amended by adding after section 28 the following new section:-

Section 29. As used in this section, the following words, unless the context requires otherwise, shall have the following meaning:

"Community development block grant," funds designated to promote the development of viable urban communities within the commonwealth, distributed by the federal government to the commonwealth pursuant to section 300 et seq. of the federal Omnibus Budget Reconciliation Act of 1981, or its successor.

"Program," any program administered by the department pursuant to section 105(a)(17) of the Housing and Community Development Act of 1974 (42 U.S.C. 5305(a)(17)) as amended from time to time, in which loans are made to private, for-profit entities through local communities with community development block grant funds.

Any documentary materials, data, or conversations whatsoever made or received by any employee of the department, any employee or official of a city or town, or any member of any advisory committee created by the secretary to make recommendations concerning the use of program funds, including materials, data or conversations made or received prior to the effective date of this section, and consisting of, or to the extent that such materials, data or conversations consist of, trade secrets or commercial or financial information regarding the operation of any business conducted by an applicant for, or a recipient of, assistance which the program is empowered to render, or regarding the competitive position of such applicant or recipient in a

particular field of endeavor, shall not be deemed public records of the program and specifically shall not be subject to the provisions of section ten of chapter sixty-six. Any discussion or consideration of such trade secrets or commercial or financial information may be held by an advisory committee created by the secretary to make recommendations concerning the use of program funds, in executive session closed to the public, notwithstanding the provisions of section eleven A 1/2 of chapter thirty A.

Section 2. Section 34 of Chapter 121B of the General Laws, as appearing in the 1990 Official Edition, is hereby amended by striking out lines 101 through 112 and inserting in place thereof the following:-

Any project, or a part of any project with the land appurtenant thereto, constructed under this section may, with the approval of the department, be sold for the fair market value thereof as determined by the department, but for not less than the total of the outstanding obligations of the commonwealth with respect to such project if the whole is sold, or not less than that percentage of the total outstanding obligations of the commonwealth with respect to such project which the cost of the part sold bears to the total cost of the entire project if a part is sold; provided, that units which are sold shall be replaced, subject to the availability of funds from the proceeds of the sale of a housing project or part thereof, or from new grants entered into by the commonwealth for the development of a housing

project pursuant to sections thirty-four, forty-one or forty-one A of this chapter.

SECTION 6. (Executive Office of Consumer Affairs-Division of Banks)

Section 1. Chapter 167A of the General Laws, as appearing in the 1990 Official Edition, is hereby amended by inserting, after section 2, the following new section:-

Section 2A. Notwithstanding the provisions of any law or regulation to the contrary, any company or bank holding company seeking authority to act under the provisions of section two of this chapter in order to effect the resolution of any banking institution for which the Federal Deposit Insurance Corporation or the Resolution Trust Corporation, or the successor of either such entity, has been appointed liquidating agent or receiver pursuant to applicable federal law, shall file a petition with the commissioner. Notice or public hearing pursuant to the provisions of chapter thirty A shall not be required for any petition filed pursuant to this section.

In determining whether or not to approve said petition, the decision of the commissioner shall be based on a finding of whether or not competition among banking institutions will be unreasonably affected and whether public convenience and advantage will be promoted. In making such determination, the commissioner shall consider, but not be limited to consideration of, a showing of net new benefits. For the purposes of this section, the term "net new benefits" shall mean initial capital investments, job creation plans, consumer and business services,

commitments to maintain and open branch offices within a bank's delineated local community as such term is used within section fourteen of chapter one hundred and sixty-seven, and such other matters as the commissioner may deem necessary or advisable. Such decision shall be subject to review in the manner provided in chapter thirty A.

Section 2. Section 3 of chapter 167B of the General Laws, as appearing in the 1990 Official Edition, is hereby amended by striking out the fifth paragraph.

Section 3. Paragraph 5 of subsection B of section 2 of chapter 167E, as appearing in the 1990 Official Edition, is hereby amended by striking out the third sentence.

Section 4. Paragraph 6 of subsection B of section 2 of said chapter 167E, as so appearing, is hereby amended by striking out the fourth sentence.

Section 5. Paragraph 7 of subsection B of section 2 of said chapter 167E, as so appearing, is hereby amended by striking out the second sentence of the second subparagraph.

SECTION 7. (Executive Office of Consumer Affairs - Department of Public Utilities)

Section 1. Section 7 of chapter 159A of the General Laws, as appearing in the 1990 Official Edition, is hereby amended by striking out in line 4 the words "The department may, after public hearing" and inserting in place thereof the following:- Notice of the application for a certificate shall be given to each holder of a certificate issued under this section who is doing business in the cities and/or towns in which the proposed

service will operate. On protest, or at the discretion of the department, the department may conduct a public hearing, and issue or refuse to issue such certificate, or may issue the same for the partial exercise.

Section 2. Section 7A of said chapter 159A of the General Laws, as so appearing, is hereby amended by striking out lines 1 through 20 and inserting in place thereof the following:-

Any certificate of public convenience and necessity granted by the department pursuant to section seven of this chapter and chapter three hundred and seventy-eight of the acts of nineteen hundred and forty-seven and any license or permit granted pursuant to sections one, three and eleven A, may be assigned and transferred in whole or in part, with the approval and consent of the department. Notice of the proposed assignment and transfer shall be given to the holders of licenses issued under section eleven A in the city or town into which said change is sought to be made and to holders of certificates issued under said section seven and doing business in such city or town. Upon protest, or at the discretion of the department, the department may hold a public hearing. No consent shall be given unless it shall have been shown to the satisfaction of the department that the proposed transfer and assignment are consistent with the public interest, that public convenience and necessity require it, and the transferee is fit, willing and able to properly conduct the operation or business authorized by said certificate, provided, however, that no certificate, license or permit shall be

transferred except in connection with the bona fide sale to the transferee of the business of the transferor theretofore conducted in connection with the certificate, permit and license or any part thereof sought to be transferred.

Section 3. Section 11A of said chapter 159A of the General Laws, as so appearing in the 1990 Official Edition, is hereby amended by striking out lines 13 through 22 beginning with the word "The" in line 13 and ending with the word "revoked" in line 22 and inserting in place thereof the following:-

Notice of the application for a charter license shall be given to each holder of a license issued under this section who is doing business in the city or town in which the proposed service is to be located or in contiguous cities or towns and to each holder of a certificate issued under section seven of this chapter who is doing business in such city or town. On protest, or at the discretion of the department, the department may conduct a public hearing, grant or refuse to grant a license to engage in the business of rendering charter service. Any such license shall remain in force unless suspended or revoked. The department may, after notice and hearing, suspend or revoke a charter license for cause.

Section 4. Paragraph (b) of section 3 of chapter 159B of the General Laws, as appearing in the 1990 Official Edition, is hereby amended by striking out the second sentence of said section and inserting in place thereof the following sentence:- A hearing under this paragraph may be held if the department

determines reasonable conditions exist that may affect the public interest, safety or welfare at a time and place to be determined by the department.

Section 5. Said paragraph (b) of section 3 of said chapter 159B of the General Laws, as so appearing, is hereby further amended by striking out lines 41 through 43 beginning with the words "to the commissioner" in line 41 and ending with the words "served by the applicant." in line 43.

Section 6. Section 4 of said chapter 159B of the General Laws, as so appearing, is hereby further amended by striking out in lines 12 and 13 the words "a hearing, which hearing shall be held", and by striking out in line 21 the words "the hearing of".

Section 7. Section 13 of chapter 159B of the General Laws, as appearing in the 1990 Official Edition, is hereby amended by striking out the first sentence and substituting the following:-

Motor vehicles owned by the Commonwealth or any of its political subdivisions and motor vehicles engaged in the transportation of non-hazardous waste materials shall be subject to section eighteen, but shall be exempt from all other provisions of this chapter.

Section 8. Chapter 164 of the General Laws, as appearing in the 1990 Official Edition, is hereby amended by striking out section 103 and inserting in place thereof the following section:-

Section 103. The department, in accordance with its rules and regulations, shall make inspections of gas required by section one hundred and nine.

The gas company shall, in such manner determined by the department, inspect, examine, ascertain and prove the accuracy of all meters which are to be used for measuring illuminating gas and which are to be furnished to, or for the use of, any consumer or company, and shall seal, stamp or mark every such meter, if it be found correct, with some suitable device or methodology to be determined by the department and recorded in the office of the state secretary, provided, however, that for all such meters purchased or acquired by a gas company after the first of January, nineteen hundred and eighty-one, the gas company in lieu of performing the foregoing inspection, examination, ascertainment and proof on each meter, may perform said procedure on a sample of meters as are to be inspected, examined, ascertained and proved according either to an attributes or variables sampling plan, such as Military Standard 105D or Military Standard 414 promulgated by the United States Department of Defense, or such other sampling procedure as the department in its discretion may determine. A meter shall not be correct if it varies more than two percent from the standard measure. The gas company shall keep a record of all meters examined by its employees with their proof at the time of inspection, using such suitable device or methodology and in a manner determined

appropriate by the department. The records of such inspections shall at all times be open for inspection by the department.

The department shall witness said inspection, examination, ascertainment and proof of the accuracy of all meters, provided, however, the department may forego witnessing said inspection, examination, ascertainment and proof of each meter where the department determines that such records kept by the gas company substantiate proper testing and sampling in accordance with law and with such suitable device or procedure or in the methodology determined appropriate by the department.

Section 9. Section 105A of chapter 164 of the General Laws, as appearing in the 1990 Official Edition, is hereby amended by striking out in the second paragraph the words "one thousand" and inserting in place thereof the words "ten thousand", and striking out the words "two hundred thousand" and inserting in place thereof the words "five hundred thousand".

Section 10. Section 115A of chapter 164 of the General Laws is hereby amended by striking the first paragraph and inserting in place thereof the following paragraph:-

Each meter for measuring gas provided by a gas company or municipal lighting plant to a consumer shall, after seven years from the date of installation or replacement or such later period of time as the department in its discretion may order, be removed by the company or municipal lighting plant from the premises of the consumer and replaced by it with such a meter which has been

tested and sealed, stamped or marked as required by section one hundred and three of this chapter.

Section 11. Section 10 of chapter 159A of the General Laws, as appearing in the 1990 Official Edition, is hereby amended by striking the word "annually", in line 12, and inserting in place thereof the words: -upon request; and by striking in line 23 the word "annual".

SECTION 8. (Executive Office of Consumer Affairs-Community Antenna Television Commission)

Section 1. Section 8 of chapter 166A of the General Laws, as appearing in the 1990 Official Edition, is hereby amended by inserting after the words "file annually with the Commission," in the second sentence the words:- "and the issuing authority."

Section 2. Section 10 of chapter 166A of the Massachusetts General Laws, as appearing in the 1990 Official Edition, is hereby amended by striking out in the first sentence the following words: "each of which shall within ten days forward copies of such complaint to the other."

SECTION 9. (Executive Office of Consumer Affairs - Board of Registration)

Section 1. Section 39 of chapter 112 of the General Laws, as appearing in the 1990 Official Edition, is hereby amended by adding, following the words "department," the following words:- "or retail store pharmacy department."

Section 2. Section 45 of chapter 112 of the General Laws, as appearing in the 1990 Official Edition, is hereby amended by deleting the second paragraph of said section in its entirety.

Section 3. Section 55 of chapter 112 of the General Laws, as appearing in the 1990 Official Edition, is hereby amended by deleting the words "and that such applicant shall graduate from said approved veterinary school no later than forty-five" in line 16 and inserting in their place the words:- or shall meet such requirements no later than one hundred and eighty. Section 55 is hereby further amended by deleting, beginning at line 18, the words: "if for any reason the candidate does not graduate within forty-five calendar days after the board's examination."

Section 4. Section 60G of chapter 112 of the General Laws, as appearing in the 1990 Official Edition, is hereby amended by deleting the words "or in his office" in line 19.

Section 5. Section 87 of chapter 112 of the General Laws, as appearing in the 1990 Official Edition, is hereby amended by striking out the comma following the word "partnership" in line 15, deleting the words "if not engaged in any other business" in line 15, and deleting the last sentence of the section.

Section 6. Chapter 112 of the General Laws, as appearing in the 1990 Official Edition, is hereby amended by striking out section 87G in its entirety, and inserting in place thereof the following section:-

Section 87G. The Board shall keep a register of applicants for certificates of registration, showing the name of the applicant, the name and location of his or her place of occupation or business, and whether he or she was granted or refused a certificate; a register in which shall be entered the

names of all persons to whom certificates of registration or permits, other than permits referred to in section eighty-seven I, are issued or granted; and a register of apprentices and students to whom permits have been granted under section eighty-seven I; and said registers shall be at all times open to public inspection. The Board shall keep a full record of its proceedings, and shall make an annual report which shall include an itemized statement of all receipts and expenses of the Board for the year.

Section 7. Section 87H of chapter 112 of the General Laws, as appearing in the 1990 Official Edition, is hereby amended by striking out lines 5 through 9, beginning with the word "Board" in line 5 and ending with the word "shows" in line 9 and inserting in place thereof the words:- satisfactory proof.

Section 8. Said section 87H of chapter 112 of the General Laws, as so appearing, is hereby further amended by inserting after the word "occupation." in line 21, the following word:- Thereupon.

Section 9. Said section 87H of chapter 112 of the General Laws, as so appearing, is hereby further amended by deleting the first sentence of the second paragraph of said section in its entirety.

Section 10. Said section 87H of chapter 112 of the General Laws, as so appearing, is hereby further amended by deleting the words "upon application to the Board for Examination" in lines 45

and 46 and inserting in place thereof the words:- upon submission of a new application for registration.

Section 11. Said section 87H of chapter 112 of the General Laws, as appearing in the 1990 Official Edition, is hereby amended by deleting the first sentence of the third paragraph of said section in its entirety.

Section 12. Section 87P of chapter 112 of the General Laws, as appearing in the 1990 Official Edition, is hereby amended by striking out the word "five" in line 46 and inserting in place thereof, the word:- three.

Section 13. Chapter 112 of the General Laws, as appearing in the 1990 Official Edition, is hereby amended by striking section 87000 and inserting in place thereof the following section:-

Section 87000. The Board may grant a license to practice electrolysis, without examination, to any person licensed or registered to practice electrolysis under the laws of any other state where the requirements for licensure or registration are, in the opinion of the Board, substantially equivalent to the requirements for licensure as an electrologist in this Commonwealth, provided that such state affords a like courtesy to electrologists licensed in this Commonwealth. Application for such a license shall be made on a form furnished by the Board and shall be accompanied by documentary proof satisfactory to the Board that the applicant is eighteen years of age or older, is of good moral character, and is currently licensed in good standing

in such other state, and by payment of a fee to be determined annually by the Commissioner of Administration pursuant to section three B of chapter seven.

A person who is licensed or registered to practice electrolysis under the laws of another state where the requirements for licensure or registration are, in the opinion of the Board, not substantially equivalent to those of this Commonwealth may nevertheless be granted a license to practice electrolysis in this Commonwealth upon submission of an application furnished by the Board for that purpose; payment of a fee to be determined annually by the Commissioner of Administration pursuant to section three B of chapter seven; submission of documentary proof satisfactory to the Board that the applicant is eighteen years of age or older, of good moral character; and currently licensed in good standing in such other state; and successful completion of the written and practical examinations administered by the Board pursuant to section eighty-seven GGG of this chapter.

A person who is engaged in the practice of electrolysis in any state where licensure or registration of electrologists is not required by law may be granted a license to practice electrolysis in this Commonwealth only upon submission of an application furnished by the Board for this purpose; payment of a fee to be determined annually by the Commissioner of Administration pursuant to section three B of chapter seven; submission of documentary proof satisfactory to the Board that

the applicant is eighteen years of age or older and of good moral character; successful completion of the written and practical examinations administered by the Board pursuant to section eighty-seven GGG of this chapter; and submission of documentary proof satisfactory to the Board that the applicant has been actively engaged in the practice of electrolysis continuously in such other state for at least ten years preceding the date of said application.

Licenses issued pursuant to this section shall be valid until August first of the next odd year, and may be renewed for a two year period upon application therefor upon a form furnished by the Board. The fee for such renewal shall be determined annually by the Commissioner of Administration pursuant to section three B of chapter seven.

Section 14. Chapter 294 of the Acts of 1986 is hereby amended by striking out the first paragraph and inserting in place thereof the following paragraph:-

Notwithstanding the provisions of any general or special law to the contrary, a registered cosmetologist and a barber shall not be prohibited from working in the same facility or physical space; provided, however, that the holder of a cosmetologist registration certificate o: barber registration certificate shall be posted in a conspicuous place in front of his working chair where it may be readily seen.

SECTION 10. (Executive Office of Economic Affairs - Massachusetts Office of Business Development)

Section 1. Chapter 434 of the Acts of 1976 is hereby amended by striking out the first sentence of the third paragraph of section 3 and inserting in place thereof the following sentence:- Any small business which has been awarded five contracts of ten thousand dollars or more each under the program shall be ineligible for further participation.

SECTION 11. (Executive Office of Educational Affairs)

Section 1. Chapter 15A of the General Laws, as enacted by chapter 142 of the Acts of 1991, is hereby amended by adding, after section 14, the following new section: --

Section 14A. (a) The board of trustees of each state college and each community college, hereinafter severally referred to as the "trustees", is hereby authorized to develop projects jointly with other public agencies, public and private institutions and private businesses, which projects shall be for the public purpose of integrating the needs of public higher education and the need for economic and technological research and development. Such projects shall be known as "integrated development projects". An integrated development project may include, but need not be limited to, projects involving the education of the students of such state college or community college and the economic and technological development of institutions and private businesses through the development of facilities for applied research and training, engineering, cooperative education programs, environmental and technological

research and development, biomedical and biotechnological research and development, integrated communications, sponsored programs in education and the development of small business incubator facilities.

(b) The trustees of a state college or a community college, or the trustees jointly of two or more state colleges or community colleges, may undertake an integrated development project after completion of a feasibility study. Such feasibility study shall be completed by the trustees in coordination with the division of capital planning and operations, hereinafter the "division". The feasibility study shall provide the following information: (i) the location of the project; (ii)the estimated square footage of the project; (iii) the total project cost, including the estimated design and construction cost of the project; (iv) the types of development that will be permitted; (v) a description of the portions of the project that will be available for use by public agencies and by private entities; (vi) a description of the agreements to be entered into between the trustees, the division, other public agencies and private entities, identifying the relationship between those parties and the proposed roles of those parties in the development of the project; (vii) the economic viability of such project, including the sources of financing for the project and the estimated operating costs of the project; and (viii) the methods proposed to acquire, design and construct such project, including a description of proposed real property transactions.

(c) The trustees may seek funds for undertaking a feasibility study for an integrated development project, in the form of grants or loans, from the Government Land Bank, hereinafter the "bank". The bank may set aside moneys in a special fund to be utilized to provide such grants or loans to the trustees and may enter into agreements with the trustees for the preparation of feasibility studies. Prior to the completion of any feasibility study hereunder, a draft thereof shall be submitted to the bank in order to ascertain whether the bank could participate with the state college or community college or, where the feasibility study has been prepared by two or more such institutions, with such institutions jointly in the financing or development of the project or projects contemplated thereby. If participation by the bank is deemed by the trustees to be feasible and necessary for the successful implementation of said project or projects, the completed feasibility study shall describe the role of the bank in the financing or development of the project.

(d) The trustees shall submit a copy of the feasibility study to the commissioner of the division, hereinafter the "commissioner", for his review and approval. The feasibility study shall be deemed to have been approved by the commissioner unless, within thirty days, the commissioner provides the trustees with a written disapproval of the feasibility study, stating the reasons for such disapproval. The trustees shall also submit the feasibility study to the higher education

coordinating council, hereinafter the "council", for its review and approval. The feasibility study may, from time to time, be revised by agreement between the trustees, the council, the commissioner and, where appropriate, the bank. The trustees shall be authorized to develop the project in accordance with the terms of the feasibility study, including revisions thereof.

(e) In the event that the feasibility study approved pursuant to subparagraph (d) provides that more than forty percent of the estimated cost to complete the project will be funded by sources other than a state appropriation or other state capital spending authorization, the acquisition, planning, design and construction of such project may be undertaken by private entities or by the state college or community college (or by two or more of such institutions where they are acting jointly), in which event such project shall not be considered a capital facility project for the purposes of General Laws chapter seven sections thirty-eight A 1/2 through forty-three I, nor shall such a project be considered a public construction contract for the purposes of General Laws chapter nine, section twenty A, General Laws chapter one hundred forty-nine sections forty-four A through forty-four J, and General Laws chapter thirty sections thirty-nine F through thirty-nine R, provided, however, that the general contractor constructing all or a portion of such project shall be obligated to furnish a performance bond and a payment bond for the construction portion of the project and, provided further, that the provisions of General Laws chapter one hundred

forty-nine sections twenty-six through twenty-seven C shall apply to the construction portion of the project. The commissioner shall, from time to time, review the planning, design and construction of an integrated development project undertaken by private parties or by a state college or community college (or by two or more of such institutions where they are acting jointly) pursuant to this subparagraph, for the purposes of determining whether the project is being designed and constructed in accordance with good architectural, engineering and construction standards.

(f) In the event that the feasibility study approved pursuant to subparagraph (d) provides that the division shall exercise control and supervision over the project, the division may proceed to develop the project in accordance with alternative methods for the procurement of design and construction services, including, but not limited to, construction management, fast-tracked or phased construction, turnkey procurement, modular construction, and design and build procurement, provided that such procurement method shall comply with the policies and procedures of sections thirty-eight A 1/2 through thirty-eight I, inclusive, of chapter seven and sections forty-four A through J, inclusive, of chapter one hundred and forty-nine, to the extent that the commissioner determines is feasible.

(g) In order to facilitate the development of an integrated development project, the commissioner, upon request of the trustees, with the consent of the council and consistent with the

approved feasibility study, shall acquire interests in real property, wherever located, by purchase, lease for a period of more than five years, or otherwise and may dispose of any interest in real property owned by the commonwealth and used, operated, maintained or held for the benefit of the state college or community college by which such integrated development project has been undertaken, and the commissioner may do so by sale, lease for an extended term, which may not exceed ninety-nine years, sale - leaseback or otherwise, to private parties or to public agencies, and the provisions of General Laws chapter seven sections forty E through forty I, and sections forty K and forty L, shall not apply to such real property acquisition or disposition. The dedication or use of land that is used, operated, maintained or held for the benefit of any such state college or community college for the purposes of developing an integrated development project, shall be considered to be use of the land for educational purposes.

(h) To provide for the portion of the costs of undertaking an integrated development project that are to be borne by a state college or community college, the trustees thereof may, in the name and on behalf of the commonwealth, transfer or pledge that it will periodically transfer to public agencies or private entities providing financing for the development of such project, any part of the funds held by them as trust funds and any part of any funds made available for expenditure on behalf of such state college or community college pursuant to an appropriation or

other spending authorization in the commonwealth's annual operating budget, provided, that in the case of any funds expected to be available for expenditure pursuant to subsequent appropriation or other spending authorization by the legislature, the trustees may only pledge that they will so transfer such funds subject to such subsequent appropriation or other spending authorization, and provided that the trustees shall not pledge capital funding authorizations financed by the issuance of general obligation bonds without the prior approval of the secretary of administration and finance. Any such pledge shall be valid and binding from the time when the pledge is made; the funds so pledged shall immediately be subject to the lien of such pledge without physical delivery thereof or further act; and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the state college or community college.

(i) For the purposes of developing, maintaining and operating an integrated development project, the trustees may, on behalf of the commonwealth, apply for grants, loans, loan guaranties and other forms of credit enhancement, hereinafter called loans, and accept such loans from public agencies, private entities, and the federal government, and the proceeds of such loans shall be used for the purposes of such project and shall not be considered revenue of the commonwealth. Any revenue generated from the development and operation of such project which is received by the trustees, shall be deposited in a trust

fund maintained by the state college or community college, and may, at the option of the trustees, be available for expenditure on such project, other integrated development projects, or general operations of the state college or community college.

(j) The trustees may authorize and execute any and all agreements, instruments, documents and certificates as may be advisable, necessary or convenient to effectuate the development of an integrated development project, including the execution and delivery of all documents required to secure the financing of such project and all documents related to the planning, design, construction, operation and maintenance of such project.

(k) This section shall be liberally construed to effectuate its purposes.

Section 2. Section 24 of chapter 15A of the General Laws, as inserted by section 7 of chapter 142 of the Acts of 1991, is hereby amended at the end of the first sentence by changing the period to a semi-colon and inserting the following:- and provided further, that with respect to any such purchases a board of trustees may join together with one or more entities, including other boards of trustees, for the purpose of joint purchasing, provided that each board of trustees shall accept sole responsibility for any payment due the vendor for its share of such purchases.

Section 3. Chapter 75 of the General Laws, as appearing in the 1990 Official Edition, is hereby amended by adding, after Section 12, the following new section:

Section 12A. (a) The board of trustees of the university, hereinafter the "trustees," is hereby authorized to develop projects jointly with other public agencies, public and private institutions and private businesses, which projects shall be for the public purpose of integrating the needs of public higher education and the need for economic and technological research and development. Such projects shall be known as "integrated development projects." An integrated development project may include, but need not be limited to, projects involving the education of the university's students and the economic and technological development of institutions and private businesses through the development of facilities for research, engineering, environmental and technological research and development, biomedical and biotechnological research and development and the development of small business incubator facilities.

(b) The trustees may undertake an integrated development project after completion and approval of a feasibility study. Such feasibility study shall provide the following information: (i) the location of the project; (ii) the estimated square footage of the project; (iii) the estimated cost to complete the project, including the estimated design and construction cost of the project; (iv) the types of development that will be permitted; (v) a description of the portions of the project that will be available for use by public agencies and by private entities; (vi) a description of the agreements to be entered into between the trustees and other public agencies and private

entities, identifying the relationship between those parties and the proposed roles of those parties in the development of the project; (vii) the economic viability of such project, including the sources of financing for the project and the estimated operating costs for the project; and (viii) the methods proposed to acquire, design and construct such project, including a description of proposed real property transactions.

(c) The trustees may seek funds for undertaking a feasibility study for an integrated development project, in the form of grants or loans, from the Government Land Bank, hereinafter the "bank." The bank may set aside two hundred thousand dollars ($200,000) in a special fund to be utilized to provide such grants or loans to the trustees and to enter into agreements with the trustees for the preparation of feasibility studies, provided that said funds shall revert to the reserves of the bank if they are not utilized by July 1, 1994. Prior to the completion of any feasibility study hereunder, if participation by the bank is deemed by the trustees to be feasible or necessary for the successful implementation of said project or projects, the trustees shall submit to the bank a draft feasibility study describing the role of the bank in the financing or development of the project.

(d) The trustees shall submit a copy of the feasibility study to the commissioner of the division, hereinafter the "commissioner," for his review and approval. The feasibility study shall be deemed to have been approved by the commissioner

unless, within sixty days, the commissioner provides the trustees with a written disapproval of the feasibility study, stating the reasons for such disapproval. The trustees shall also submit the feasibility study to the higher education coordinating council, hereinafter the "council" for its information, and shall keep said council informed regarding the development of the project. The feasibility study may, from time to time, be revised by the trustees, with the approval of the commissioner. The trustees shall be authorized to develop the project in accordance with the terms of the feasibility study, including revisions thereof.

(e) In the event that the feasibility study approved pursuant to subparagraph (d) provides that more than forty percent of the estimated cost to complete the project will be funded by sources other than a state appropriation or other state capital spending authorization, the acquisition, planning, design and construction of such project may be undertaken by private entities or the university, in which event such project shall not be considered a capital facility project for the purposes of General Laws chapter seven sections thirty-eight A1/2 through forty-three I, nor shall such a privately developed project be considered a public construction contract for the purposes of General Laws chapter nine, section twenty A, General Laws chapter one hundred and forty-nine sections forty-four A through forty-four J, and General Laws chapter thirty sections thirty-nine F through thirty-nine R; provided, however, that the general contractor constructing such project shall be obligated to

furnish a performance bond and a payment bond for the construction portion of the project and, provided further, that the provisions of General Laws chapter one hundred and forty-nine sections twenty-six through twenty-seven C shall apply to the construction portion of the project. The commissioner may, from time to time, review the planning, design and construction of an integrated development project.

(f) In the event that the feasibility study approved pursuant to subparagraph (d) provides that the division shall exercise control and supervision over the project, the division may proceed to develop the project in accordance with alternative methods for the procurement of design and construction services, including, but not limited to, construction management, fast-tracked or phased construction, turnkey procurement, modular construction, and design and build procurement; provided, that such procurement method shall comply with the policies and procedures of sections thirty-eight A 1/2 through thirty-eight I, inclusive, of chapter seven and sections forty-four A through J, inclusive, of chapter one hundred and forty-nine, to the extent that the commissioner determines is feasible.

(g) In order to facilitate the development of an integrated development project, the commissioner, upon request of the trustees and consistent with the approved feasibility study, shall acquire interests in real property, wherever located, by purchase, lease for a period of more than five years, or otherwise and may dispose of any interest in real property owned

by the commonwealth and within the university's control, by sale, lease for an extended term which may not exceed ninety-nine years, sale-leaseback or otherwise, to private rties or to public agencies, and the provisions of Genera ws chapter seven sections forty E through forty I, and sections forty K and forty L, shall not apply to such real property acquisition or disposition. The university's dedication or use of land within its control for the purposes of developing an integrated development project, shall be considered to be use of the land for educational purposes.

(h) To provide for the university's portion of the costs of undertaking an integrated development project, the trustees may, in the name and on behalf of the commonwealth, transfer or pledge that it will periodically transfer to public agencies or private entities providing financing for the development of such project, any art of the funds held as trust funds by the university and may edge capital funding; provided, that the trustees shall not pledge capital funding authorizations financed by the issuance of general obligation bonds without the prior approval of the secretary of administration and finance. Any such pledge shall be valid and binding from the time when the pledge is made; the funds so pledged shall immediately be subject to the lien of such pledge without physical delivery thereof or further act; and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the university.

(i) For the purposes of developing, maintaining and operating an integrated development project, the trustees may, on behalf of the commonwealth, apply for grants, loans, loan guaranties and other forms of credit enhancement, hereinafter called loans, and accept such loans from public agencies, private entities, and the federal government, and the proceeds of such loans shall be used for the purposes of such project and shall not be considered revenue of the commonwealth. Any revenue generated from the development and operation of such project which is received by the trustees, shall be deposited in a trust fund maintained by the university, and may, at the option of the trustees, be available for expenditure on such project, other integrated development projects, or general university operations.

(j) The trustees may authorize and execute any and all agreements, instruments, documents and certificates as may be advisable, necessary or convenient to effectuate the development of an integrated development project, including the execution and delivery of all documents required to secure the financing of such project and all documents related to the planning, design, construction, operation and maintenance of such project.

(k) This section shall be liberally construed to effectuate its purposes.

Section 4. Chapter 75D of the General Laws, as appearing in the 1990 Official Edition, is hereby amended by striking section 1 and inserting in place thereof the following section:-

Section 1. As used in this chapter the term "private occupational school" shall mean a school maintained or classes conducted for profit or by charging tuition, for the purpose of teaching business, trade, industrial, health or allied health, occupational skills, which is not licensed or otherwise regulated by any agency of the commonwealth. Said term, however, shall not include a school or college regularly chartered and authorized by the commonwealth to grant degrees, a school conducted by any person for the education and training of such person's employees, or a school exclusively engaged in training physically disabled persons.

Section 5. Section 2 of said chapter 75D, as so appearing, is hereby further amended by striking out in lines 1, 4, 8 and 10 the word "business" and inserting in place thereof the word:- occupational.

Section 6. Section 3 of said chapter 75D, as so appearing, is hereby amended by striking out, in lines 1, 10, 12 and 27, the word "business" and inserting in place thereof the word:- occupational.

Section 7. Section 4 of said chapter 75D, as so appearing, is hereby amended by striking out, in lines 1, 16 and 19, the word "business" and inserting in place thereof the word:- occupational.

Section 8. Section 5 of said chapter 75D, as so appearing, is hereby amended by striking out, in line 6, the word "business" and inserting in place thereof the word:- occupational.

Section 9. Section 6 of said chapter 75D, as so appearing, is hereby amended by striking out, in line 1, the word "business" and inserting in place thereof the word:- occupational.

Section 10. Section 7 of said chapter 75D, as so appearing, is hereby amended by striking out, in lines 2, 9 and 15, the word "business" and inserting in place thereof the word:- occupational.

Section 11. Section 9 of said chapter 75D, as so appearing, is hereby amended by striking out, in line 1, the word "business" and inserting in place thereof the word:- occupational.

Section 12. Section 10 of said chapter 75D, as so appearing, is hereby amended by striking out, in line 1, the word "business" and inserting in place thereof the word:- occupational.

Section 13. Section 11 of said chapter 75D, as so appearing, is hereby amended by striking out, in lines 1 and 4, the word "business" and inserting in place thereof the word:- occupational.

Section 14. Section 12 of said chapter 75D, as so appearing, is hereby amended by striking out, in line 1, the word "business" and inserting in place thereof the word:- occupational.

Section 15. Section 13 of said chapter 75D, as so appearing, is hereby amended by striking out, in line 2, the word "business" and inserting in place thereof the word:- occupational.

Section 16. Section 14 of said chapter 75D, as so appearing, is hereby amended by striking out, in lines 1 and 15, the word "business" and inserting in place thereof the word:- occupational.

Section 17. Sections 20A through 21G of chapter 93, as appearing in the 1990 Official Edition, are hereby repealed.

Section 18. Section 19 of chapter 269 of the General Laws, as appearing in the 1990 Official Edition, is hereby amended by inserting after the first sentence in the fourth paragraph, in line 41, the following sentence:- A public secondary institution shall be deemed to have complied with said reporting requirement if: (i) it has filed its student handbook with the commissioner of education under section thirty-seven H of chapter seventy-one; (ii) it provides a copy of the handbook to each of its students; and (iii) the handbook contains the information required by this section and sections seventeen and eighteen.

SECTION 12. (Executive Office of Human Services - Office for Children)

Section 1. Section 10 of chapter 28A of the General Laws, as appearing in the 1990 Official Edition, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:

(a) The office shall issue and may renew a license to any person other than a department, agency or institution of the commonwealth or any political subdivision thereof, who meets applicable standards and requirements to establish and maintain or to assist in the maintenance of a school age child care

program, day care center, family day care home which is not part of a family day care system, family day care system, family foster care which is not supervised and approved by a placement agency, group care facility, or temporary shelter facility.

SECTION 13. (Executive Office of Human Services - Department of Public Welfare)

Section 1. Section 6B of chapter 29 of the General Laws, as appearing in the 1990 Official Edition, is hereby amended by striking out subsection (a) of said section 6B and inserting in place thereof the following subsection:-

(a) Notwithstanding any general or special law to the contrary, no state agency shall expend federal grant funds unless such state agency shall have, at least ten days prior to expenditure, notified the commissioner of federal approval of a grant, on forms and in a manner prescribed by the commissioner. Such notice shall, at a minimum include:

(1) reference to the federal statutory authority under which the action is proposed;

(2) a description of the substance of the application;

(3) a fiscal statement setting forth:

(i) the projected grant budget per year including the number of personnel to be funded with federal funds;

(ii) the estimated amount of cash match, in-kind match or other monies to be supplied by the state and any other source from which such match will be required, and a description of the federal allocation formula and matching requirements including whether the grant is distributed to the commonwealth on the basis

of a federally specified formula or on the basis of the federal grantor's discretion and a description of the federal constraints placed on the agency's discretion to use the grant; and

(iii) the duration of the grant, the number of fiscal years the agency has been receiving assistance, the number of fiscal years in which assistance can be expected to continue under the program, and a statement as to the priority of the program alongside other state or federally funded programs, including whether the agency would request that all or part of the program be funded out of the General Fund in the event federal funds are reduced or discontinued.

If, within ten days of notification of federal approval of a grant, no action has been taken by the commissioner, spending may proceed. To avoid any inconsistency or duplication in review, the commissioner shall establish procedures whereby notices given under this section shall be coordinated with other notice requirements for project or plan proposals in connection with federal aid required under Circular A-95 of the United States Office of Management and Budget.

Notwithstanding the foregoing provisions, any federal grant which is included as an appropriation in the state budget shall not be subject to the foregoing review.

SECTION 14. (Executive Office of Labor - Department of Labor and Industries)

Section 1. Section 17 of chapter 242 of the Acts of 1989 is hereby repealed.

Section 2. The second paragraph of section 29 of chapter 121B of the General Laws, as appearing in the 1990 Official Edition, is hereby repealed.

Section 3. Section 6 of chapter 136 of the General Laws, as appearing in the 1990 Official Edition, is hereby amended by striking out the first paragraph of clause (50) and inserting in place thereof the following paragraphs:-

The keeping open of a store or shop and the sale at retail of goods therein, but not including the retail sale of goods subject to chapter one hundred and thirty-eight, and the performance of labor, business, and work directly connected therewith on Sunday; provided, however, that this exemption shall not apply to any legal holiday as defined in this chapter.

In any year in which Christmas Day occurs on a Sunday, this exemption shall not apply to said Sunday but shall apply to the day following.

Section 4. Section 6 of chapter 136 of the General Laws, as appearing in the 1990 Official Edition, is hereby amended by striking out clause (52) beginning with line 169 and ending with line 191 and inserting in place thereof the following clause:-

(52) The retail sale of alcoholic beverages not to be drunk on the premises by retail establishments throughout the commonwealth licensed under section fifteen of chapter one hundred and thirty-eight; provided, however, that a local licensing authority may grant at its discretion, a permit to allow the sale of alcoholic beverages under this clause; and

provided, further, that no such sale shall occur unless such permit has been granted; and provided further, that such permit shall not allow such sale to occur prior to the hour of twelve o'clock noon, and provided, further, that establishments operating under the provisions of this clause shall compensate employees at a rate of not less than one and one-half the employee's regular rate; and provided, further, that no employee shall be required to work, and refusal to work on a Sunday shall not be grounds for discrimination, dismissal, discharge, reduction of hours, or any other penalty.

Section 5. Section 6 of chapter 136 of the General Laws, as appearing in the 1990 Official Edition, is hereby amended by adding at the end thereof the following new clause:-

(54) The opening and operation of any manufacturing establishment.

Section 6. Section 7 of said chapter 136, as appearing in the 1990 Official Edition, is hereby amended by striking out the last sentence of the first paragraph.

Section 7. Section 13 of chapter 136 of the General Laws, as appearing in the 1990 Official Edition, is hereby amended by striking out said section and inserting in place thereof the following section:-

Section 13. The provisions of sections five to eleven, inclusive, shall, except as provided in section fourteen, apply to all legal holidays, except January first, the third Monday in January, the third Monday in February, March seventeenth, the

third Monday in April, May twentieth, the last Monday in May, June seventeenth, July fourth, the first Monday in September, the second Monday in October and November eleventh or on the day following when any of said days occur on Sunday.

Any retail establishment which operates on January first, the last Monday in May, July fourth, the first Monday in September, the second Monday in October or November eleventh or on the day following when any of said days occur on Sunday, under the exemption granted by this section, shall pay to those employees working on any of said days, time and one-half, or such larger sum as may be determined by contract; such work shall be voluntary and refusal to work for any retail establishment on such legal holidays shall not be grounds for discrimination, dismissal, discharge, reduction of hours, or any other penalty. The provisions of this section shall be enforced by the department of labor and industries. The provisions of section one hundred and eighty A of chapter one hundred and forty-nine shall apply to any violation of this paragraph.

Section 8. Section 15 of chapter 136 of the General Laws, as appearing in the 1990 Official Edition, is hereby repealed.

Section 9. Section 26 of chapter 149 of the General Laws, as appearing in the 1990 Official Edition, is hereby amended by inserting after the first paragraph the following new paragraph:-

The provision of this section shall not apply where the total cost of all work to be performed is less than two hundred and fifty thousand dollars as estimated by the awarding authority

prior to the bid. This section shall not apply to those service and maintenance contracts which do not include the construction of additions to and alterations of public buildings or public works.

Section 10. Section 27 of chapter 149 of the General Laws, as appearing in the 1990 Official Edition, is hereby amended by inserting at the end of the fifth sentence in line 22 the following:- provided however that the commissioner shall not establish nor furnish such schedule if said cost of said project is less than two hundred and fifty thousand dollars as estimated by the awarding authority prior to the bid.

Section 11. Section 65 of chapter 149 of the General Laws, as appearing in the 1990 Official Edition, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:- No person shall employ a minor under sixteen, or permit him to work, in any occupation for which a permit for employment is required, for more than six days in any one week, or more than forty hours in any non-school week, or more than eighteen hours in any school week, or more than eight hours in any non-school day, or more than three hours in any school day, or, except as permitted in section sixty-nine, before seven o'clock in the morning, or after seven o'clock in the evening, except from July first through Labor Day, when evening hours shall be extended to nine o'clock in the evening.

Section 12. Section 148 of chapter 149 of the General Laws, as appearing in the 1990 Official Edition, is hereby amended by deleting the fourth paragraph thereof.

Section 13. Said section 148 of said chapter 149, as so appearing, is hereby further amended by striking out lines 56 through 60, inclusive, and inserting in place thereof the following:- Every person having employees in his service shall pay weekly, biweekly, or semi-monthly each such employee, provided, however, that every person having hourly paid employees in his or her service whose schedule or number of regular hours worked varies from week to week shall pay weekly each such employee. An employee shall be paid the wages earned by him or her within six days of the termination of the pay period during which the wages were earned if employed for five or six days in a calendar week, or within seven days of the termination of the pay period during which the wages were earned if such employee is employed seven days in a calendar week, or, in the case of an employee who

Section 14. Said section 148 of said chapter 149, as so appearing, is hereby further amended by striking out lines 85 through 90 and the word "monthly" on line 91, and inserting in place thereof, the following:- provided, further, that employees engaged in a bona fide executive, administrative or professional capacity as determined by the commissioner and employees whose salaries are regularly paid on a weekly, biweekly, semi-monthly basis or at a rate for a work week or work weeks of substantially

the same number of hours from week to week may be paid monthly if such employee elects at his or her own option to be paid monthly;

Section 15. Said section 148 of said chapter 149, as so appearing, is hereby further amended by striking out in lines 103 through 104, the words "work week" and inserting in place thereof, the words:- pay period.

Section 16. Section 148B of chapter 149 of the General Laws, as appearing in the 1990 Official Edition, is hereby repealed.

Section 17. Sections 183 and 184 of chapter 149 of the General Laws, as appearing in the 1990 Official Edition, are hereby repealed.

SECTION 15. (Executive Office of Transportation and Construction)

Section 1. Notwithstanding the provisions of any general or special law to the contrary, the department of public works is authorized to transfer any real property consisting of 10,000 square feet or less in connection with the Central Artery/Tunnel Project to any public agency of the commonwealth, individual or other legal entity without the need for approval by any other agency or instrumentality of the state.

The department of public works, in connection with the Central Artery/Tunnel Project, may transfer real property or easements in real property to any public agency or authority of the commonwealth, an individual or other legal entity, in lieu of monetary consideration, for the acquisition of real property or

easements in real property from such agencies, authorities, individuals or entities.

Section 2. Notwithstanding the provisions of any general or special law to the contrary, the department of public works is authorized to design, construct, supervise and control buildings which are part of the Central Artery/Tunnel Project in accordance with state law applicable to public works projects and federal law and requirements of the Federal Highway Administration.

SECTION 16. (Executive Office of Transportation and Construction - Department of Public Works)

Section 1. Section 27C of chapter 9, as appearing in the 1990 Official Edition, is hereby amended by striking out the first paragraph and inserting in place thereof the following paragraph:-

As early as possible in the planning process of a project undertaken by a state body or prior to a state body's funding, the state body shall determine if the project will have an effect on any property, at or adjacent to the location of the project and listed in the state register of historic places, and determine if that effect is adverse or not, and so notify the commission. The commission shall notify the state body within thirty days, or after deliberation at its next regularly scheduled meeting, of its concurrence with, or objection (with explanation of the cause and nature of the adverse effect) to, the state body's finding. If the commission fails to respond within thirty days, or after its next regularly scheduled meeting, the project may proceed. In instances where the

commission and/or the state body find that the project will have an adverse effect, the commission and the state body shall meet to discuss means to avoid, minimize, or mitigate the adverse effect, provided, however, that such property was listed in the state register of historic places at least six months prior to the notification by the state body to the commission. When the project is one which requires the issuance of a license by a state body, the review and consultation by the state body and the commission shall be limited to the impact of effects resulting from project activity within the scope of the license. Following consultation, the state body shall report as to the reasonable measures it will take to avoid, minimize, or mitigate the adverse effect. The commission shall prepare an annual report by June 30 of all consultations and their outcomes. The commission shall be directed to promptly issue all rules and regulations necessary to implement the provisions of this section.

Section 2. Notwithstanding the provisions of any general or special law to the contrary, all persons liable under section five of chapter twenty-one E of the General Laws who are liable for a release or threat of release for which the commonwealth incurs costs for assessment, containment, or removal shall be liable, jointly and severally, to the commonwealth in an amount up to three times their liability pursuant to said section five.

Section 3. Section 26B of chapter 9 of the General Laws, as appearing in the 1990 Official Edition, is hereby amended by inserting after the last sentence of the definition of "Project",

in line 30, the following sentence:- The definition of project does not include force account projects, work in department of public works maintenance pits and garages, roadway maintenance, including resurfacing and improvements to drainage, public works economic development projects, installation of traffic signals, construction of bus shelters, improvements to highway rest areas, works funded by special allotments to cities and towns, and works undertaken under the auspices of the small town road assistance program.

Section 4. Section 2J of chapter 29 of the General Laws, as appearing in the 1990 Official Edition, is hereby amended by inserting, in line 6, after the words "any amounts collected", the words:- by the department of environmental protection.

Section 5. Chapter 29 of the General Laws, as appearing in the 1990 Official Edition, is hereby amended by inserting after section 2S the following new section:-

Section 2T. There shall be established and set up on the books of the commonwealth a separate fund to be known as the Highway Oil and Hazardous Material Release Reimbursement Fund. There shall be credited to such fund any amounts collected by the department of public works pursuant to chapter twenty-one E and any income derived from the investment of amounts credited to said fund.

Amounts credited to the fund shall be used, subject to appropriation, by the department of public works.

Section 6. Section 20A of chapter 29 of the General Laws, as appearing in the 1990 Official Edition, is hereby amended by striking out, in line 9, the words "fifteen thousand dollars" and inserting in place thereof the words:- twenty-five thousand dollars or five percent of the cost of the existing contract, whichever is greater.

Section 7. Section 39G of chapter 30 of the General Laws, as appearing in the 1990 Official Edition, is hereby amended by striking out the eighth paragraph and inserting in place thereof the following paragraph:-

Substantial completion, for the purposes of this section, shall mean that the work required by the contract has been substantially completed in accordance with the terms of the contract as determined by the awarding authority.

Section 8. Section 30A of chapter 85 of the General Laws, as appearing in the 1990 Official Edition, is hereby amended by striking out, in line 33, the word "one" and inserting in place thereof the word:- two.

Section 9. Section 40 of chapter 131 of the General Laws, as appearing in the 1990 Official Edition, is hereby amended by deleting the first sentence of said section and inserting in place thereof the following sentence:-

Except as provided in this section and section forty and one-half, no person shall remove, fill, dredge or alter any bank, fresh water wetland, coastal wetland, beach, dune, flat, marsh, meadow or swamp bordering on the ocean or on any estuary, creek,

river, stream, pond, or lake, or any land under said waters or any land subject to tidal action, coastal storm flowage, or flooding, other than in the course of maintaining, repairing or replacing, but not substantially changing or enlarging, an existing and lawfully located structure or facility used in the service of the public and used to provide electric, gas, water, telephone, telegraph and other telecommunication services, without filing written notice of his intention to so remove, fill, dredge or alter, including such plans as may be necessary to describe such proposed activity and its effect on the environment and without receiving and complying with an order of conditions and provided all appeal periods have elapsed.

Section 10. Section 40 of chapter 131 of the General Laws, as appearing in the 1990 Official Edition, is hereby amended by inserting after the eighth sentence thereof, in line 36, the following sentence:- Notwithstanding the foregoing, relative to notices of intent filed by the department of public works, the said filing fees to be paid to the department of environmental protection shall not be payable at the time of filing but the accumulated filing fees shall be paid semi-annually into a fund to be designated by the department of environmental protection, and filing fees to be paid to a city or town shall not be payable at the time of filing but the accumulated filing fees shall be paid semi-annually in a lump sum to the said city or town.

Section 11. Chapter 131 of the General Laws, as appearing in the 1990 Official Edition, is hereby amended by adding, after section 40, the following new section:

Section 40 1/2. If an applicant intends to remove, fill, dredge, or alter land as defined in section forty which is located in two or more cities or towns the applicant may elect to follow the provisions herein. The notice requirements under this section shall comply with the procedural requirements in section forty and in addition shall further clearly state the election to invoke this section. The applicant shall certify to the department compliance with this notice requirement. Each city and town where the proposed activity is contemplated shall receive such notice. Upon receipt of such notice, each city and town shall designate one member of its conservation commission or, if none, an individual designated by the board of selectmen in a town or the mayor of a city to represent the city or town. The individuals so designated shall act in concert as a consolidated conservation commission. The consolidated conservation commission shall have all of the duties, powers, and obligations of the conservation commission, selectmen, or mayor as set forth in section forty and shall conduct itself in accordance with and be subject to the procedural and substantive requirements set forth therein. The failure of a city or town to designate an individual to the consolidated conservation commission or to participate in its deliberations shall be deemed

a consent by that city or town to the proposed activity without the imposition of any conditions.

One half of the fee required pursuant to section 40 shall be divided between those cities and towns which participate in the consolidated conservation commission and the remainder shall be paid to the department.

Rules and regulations shall be promulgated by the commissioner to effectuate the purposes of this section. However, failure by the commissioner to promulgate rules and regulations shall not act to suspend or invalidate the effect of this section.

SECTION 17. (Local Mandate Relief - Refiled Bills from House 1 FY 92)

Section 1. Section 2 of chapter 32B of the General Laws, as appearing in the 1990 Official Edition, is hereby amended by striking paragraph (j) and inserting in place thereof the following:-

(j) "Health care organization", an organization or other entity that furnishes, arranges for, or otherwise provides a specified or unlimited range of medical, surgical, dental, hospital and other types of health care services. For the purpose of this chapter, health care organizations shall include, but not be limited to, any non-profit hospital service corporation organized under chapter one hundred seventy-six A, any medical service corporation organized under chapter one hundred seventy-six B, any health maintenance organization organized under chapter one hundred seventy-six G, and any

preferred provider arrangement organized under chapter one hundred seventy-six I.

Section 2. Section 3 of said chapter 32B, as so appearing, is hereby amended by striking the first sentence and inserting in place thereof the following sentence:-

Upon acceptance of this chapter as hereinafter provided, the appropriate public authority of the governmental unit shall negotiate with and purchase, on such terms as it deems to be in the best interest of the governmental unit and its employees, from one or more insurance companies, savings banks or nonprofit hospital, medical, dental, other service corporations or health care organizations, a policy or policies of group life and accidental death and dismemberment insurance covering employees, and group general or blanket insurance providing hospital, surgical, medical and dental benefits covering employees and their dependents as provided under section eleven and section eleven A if applicable and shall execute all agreements or contracts pertaining to said policies or any amendments thereto for and on behalf and in the name of such governmental unit.

Section 3. Section 53D of chapter 44 of the General Laws, as appearing in the 1990 Official Edition, is hereby amended by striking out in line 18 the words "shall not" and inserting in place thereof the word:- may.

Section 4. Section 37 of chapter 51 of the General Laws, as appearing in the 1990 Official Edition, is hereby amended by adding at the end of the first sentence the following clause:-

; provided, however, that after January first, nineteen hundred and ninety-two, the annual register, so called, shall be prepared at least every three years.

Section 5. Section 2A of chapter 60A of the General Laws, as most recently amended by section 270 of chapter 150 of the Acts of 1990, is hereby amended by striking out in the fourth sentence the words "and by the joint committee on taxation".

Section 6. Chapter 589 of the Acts of 1987, as most recently amended by chapter 11 of the Acts of 1990, is hereby repealed.

Section 7. Paragraph (d) of section 39M of the General Laws, as appearing in the 1990 Official Edition, is hereby amended by striking out clause (4).

Section 8. Chapter 30B of the General Laws as appearing in the 1990 Official Edition, as amended by sections 110, 111 and 112 of chapter 138 of the Acts of 1991, is hereby repealed.

Section 9. Notwithstanding the provisions of any general or special law to the contrary, regional and public libraries shall have the option to charge fees for services rendered to the public and to other libraries; provided, that notwithstanding the provisions of any general or special law to the contrary, regional and public libraries may retain the revenues from any such fees established on or after January first, nineteen hundred and ninety-two.

EMERGENCY REGULATION

830 CMR: DEPARTMENT OF REVENUE

830 CMR 63.00: TAXATION OF CORPORATIONS

830 CMR 63.38M.1: Massachusetts Research Credit

(1) Statement of Purpose, Outline of Topics, Effective Date.

(a) Purpose of Regulation. This regulation, 830 CMR 63.38M.1, explains the calculation of the corporate excise credit for Massachusetts research expenses afforded by M.G.L. c. 63, s. 38M.

(b) Outline of Topics. In order to facilitate the use of this regulation, 830 CMR 63.38M.1, this subsection lists the sections contained in the regulation, 830 CMR 63.38M.1.

(1) Statement of Purpose, Outline of Topics, Effective Date.
(2) Definitions.
(3) General.
(4) Massachusetts Qualified Research Expenses.
(5) Massachusetts Qualified Research Base Amount.
(6) Massachusetts Basic Research Payments.
(7) Controlled Groups and Entities Under Common Control.
(8) Limitations on the Credit.
(9) Interaction With Other Credits.
(10) Carry Over of Unused Credit.
(11) Mergers and Changes of Ownership.
(12) Combined Groups.

(c) Effective Date. This regulation, 830 CMR 63.38M.1, takes effect upon promulgation and applies to expenses incurred on or after January 1, 1991.

(2) Definitions. For purposes of this regulation, 830 CMR 63.38M.1, the following terms shall have the following meanings, unless the context requires otherwise:

Aggregated group, a group of entities required to aggregate their activities under 830 CMR 63.38M.1(7), below, for purposes of determining the credit.

Basic Research, any research, the payments for which, are basic research payments under Section 41(e) of the Code.

Code, the Internal Revenue Code of the United States as amended and in effect on August 12, 1991.

Corporation, a business corporation organized under or subject to M.G.L. c. 156B, subject to the excise imposed by M.G.L. c. 63, s. 32 or s. 32D(b), or a corporation, association, or

organization established under laws other than those of Massachusetts, subject to the excise imposed by M.G.L. c. 63, s. 39 or s. 32D(b).

Credit, the credit for research expenses allowed by M.G.L. c. 63, s. 38M, as added by St. 1991, c. 176, s. 6.

Federal Credit, the credit against the federal income tax allowed by Section 38(b)(4) of the Code, as determined under Section 41(a) of the Code.

Qualified Research, any research, the expenses related to which are qualified research expenses under Section 41(b) of the Code.

Research facility located in Massachusetts, a permanent site, physically located in Massachusetts continuously used to conduct qualified or basic research.

(3) General.

(a) Computation of Credit. The Massachusetts credit for research expenses for the taxable year shall be an amount equal to the sum of the following amounts:

1. Ten percent of the excess, if any, of Massachusetts qualified research expenses for the taxable year, as determined under 830 CMR 63.38M.1(4), below, over the Massachusetts qualified research base amount, as determined under 830 CMR 63.38M.1(5), below, plus

2. Fifteen percent of Massachusetts basic research payments for the taxable year, as determined under 830 CMR 63.38M.1(6), below.

(b) Eligibility for the Credit. The Massachusetts credit for research expenses is available to all domestic corporations subject to tax under M.G.L. c. 63, s. 32, and all foreign corporations subject to tax under M.G.L. c. 63, s. 39.

(c) Eligible Expenses. The credit applies only to research expenses incurred on or after January 1, 1991.

(d) Effect on Net Income. In determining net income for a taxable year under M.G.L. c. 63, s. 30.5(b), the deduction that may be taken with respect to any expenses that qualify for the credit must be determined by reducing the amount of such expenses for the taxable year by the amount of the credit determined for the taxable year under 830 CMR 63.38M.1(3)(a), above. For purposes of this provision, 830 CMR 63.38M.1(3)(d), the amount of the credit includes any amount of credit disallowed for the taxable year under the limitations described at 830 CMR

63.38M.1(8), below, but does not include any amount of credit carried over from previous taxable years under the provisions of 830 CMR 63.38M.1(10), below. Also, in determining net income for a taxable year, Subsection (c) of Section 280C of the Code, as amended and in effect for the taxable year, shall not apply.

(e) S Corporations. S corporations may apply the credit against their corporate excise liability under the non-income or, if applicable, the income measure of the corporate excise. The credit does not flow through to the individual shareholders of an S corporation.

(f) Unincorporated Flow-Through Entities. Unincorporated flow-through entities, such as partnerships and joint ventures, shall be treated as flow-through entities for purposes of determining the credit, unless the aggregation provisions of 830 CMR 63.38M.1(7), below, require otherwise. All amounts relevant to the calculation of the credit that are paid or received by such entities shall be attributed to the owners of the entities in accordance with Section 704 of the Code, as amended and in effect for the taxable year, and shall be taken into account in determining the credit for the taxable year during which the taxable year of the unincorporated flow-through entity ends.

(g) Accounting Rules. For all purposes under this regulation, 830 CMR 63.38M.1, in determining when a research expense is incurred, corporations shall use the same method of accounting as they use to compute the federal credit under Section 41 of the Code.

(4) Massachusetts Qualified Research Expenses.

(a) General. A corporation's Massachusetts qualified research expenses for a taxable year are those expenses that meet both of the following requirements:

1. The expenses must be qualified research expenses under Section 41(b) of the Code; and

2. The expenses must have been incurred for research activity conducted in Massachusetts.

(b) Research Activity Conducted in Massachusetts. Expenses incurred for research activity conducted in Massachusetts are:

1. Wages. Wages paid for qualified services, as defined by Section 41(b)(2)(B) of the Code, performed in Massachusetts;

2. Supplies. Amounts paid for supplies, as defined by Section 41(b)(2)(C) of the Code, used or consumed in Massachusetts in conducting qualified research;

3. Rent. Rental or lease payments for tangible personal property used in Massachusetts in conducting qualified research;

4. Computer fees. Amounts paid for the right to use computers located in Massachusetts in the conduct of qualified research that takes place in Massachusetts, to the extent such amounts are treated as in-house research expenses under Section 41(b)(2)(A)(iii) of the Code;

5. Contract research expenses. Sixty-five percent of amounts paid to other persons as contract research expenses, as defined by Section 41(b)(2)(C) of the Code, to the extent attributable to research activity conducted at a research facility located in Massachusetts.

Where such expenses relate to amounts paid for services performed both within and outside Massachusetts or tangible personal property used both within and outside Massachusetts, the amount of the expense must be prorated between Massachusetts and non-Massachusetts activity based on the ratio of days the service provider or tangible personal property was employed in research in Massachusetts to the total number of days the service provider or tangible personal property was employed in research both within and outside Massachusetts.

(5) Massachusetts Qualified Research Base Amount.

(a) General. The Massachusetts qualified research base amount is the product of the following amounts:

1. The Massachusetts fixed-base percentage, and

2. The average annual gross receipts of the corporation for the four taxable years preceding the taxable year for which the credit is being determined, as computed under 830 CMR 63.38M.1(5)(d), below.

(b) Minimum Massachusetts Qualified Research Base Amount. Notwithstanding the provisions of 830 CMR 63.38M.1(5)(a), above, in no event shall the Massachusetts qualified research base amount for the taxable year for which the credit is being determined be less than 50 percent of the Massachusetts qualified research expenses as computed for the taxable year under 830 CMR 63.38M.1(4)(a), above.

(c) Massachusetts Fixed-Base Percentage.

1. General rule. Except as provided below, the Massachusetts fixed-base percentage is determined by dividing the corporation's aggregate Massachusetts qualified research expenses, as determined under 830 CMR 63.38M.1(4)(a), above, for all taxable years beginning after December 31, 1983, and before January 1, 1989, by the corporation's aggregate gross receipts for such taxable years, as computed under 830 CMR 63.38M.1(5)(d), below. However, in no event shall the Massachusetts fixed-base percentage exceed 16 percent. Massachusetts fixed-base percentage shall be rounded to the nearest 1/100 of 1 percent.

2. Start-up companies. If there are fewer than three taxable years beginning after December 31, 1983, and before January 1, 1989, in which the corporation had both (i) gross receipts, computed under Section 41(c)(1)(B) of the Code, attributable to Massachusetts sales, or, in the case of a corporation that makes the election to use federal gross receipts under 830 CMR 63.38M.1(5)(d), gross receipts, computed under Section 41(c)(1)(B) of the Code, whether or not attributable to Massachusetts sales, and (ii) Massachusetts qualified research expenses, as determined under 830 CMR 63.38M.1(4)(a); above, the Massachusetts fixed base percentage is three percent.

3. Inadequate Records. If a corporation cannot compute the Massachusetts fixed-base percentage as required by 830 CMR 63.38M.1(5)(a)1., above, due to inadequate accounts and records for the base period, the Massachusetts fixed base percentage is sixteen percent.

(d) Gross Receipts. For purposes of 830 CMR 63.38M.1(5)(a)2., above, the average annual gross receipts of the corporation for the four taxable years preceding the taxable year for which the credit is being determined shall be computed in the same manner as required under Section 41(c)(1)(B) of the Code, and for purposes of 830 CMR 63.38M.1(5)(c)1., above, aggregate gross receipts for the base period shall be determined in the same manner as required under Section 41(c)(3)(A) of the Code. Gross receipts may be reduced by returns and allowances as allowed under Section 41(c)(1)(B)(5) of the Code.

1. Election to use Massachusetts gross receipts. Notwithstanding the provisions of this subsection, 830 CMR 63.38M.1(5)(d), a corporation may elect to compute gross receipts using only those gross receipts attributable to Massachusetts sales, provided that the election shall apply to both the computation of

average annual gross receipts for purposes of 830 CMR 63.38M.1(5)(a)2., and aggregate gross receipts for purposes of 830 CMR 63.38M.1(5)(c)1, above.

2. Method of election. The election must be made when filing the return for the first taxable year for which the credit is claimed, but except as provided by 830 CMR 63.38M.1(5)(d)3., below, may not be made retroactively on an amended return or claim for abatement. Corporations shall indicate their election by checking the appropriate box on Schedule RC, Research Credit, or RCA, Aggregated Research Credit.

3. Effect of election. Once made, the election shall apply to each of the corporation's subsequent taxable years and may not be revoked or retroactively altered by filing an amended return or claim for abatement. If the election is not made when filing a return for the first taxable year for which the credit is claimed, the corporation must use federal gross receipts in determining the credit for that taxable year and all subsequent taxable years. However, notwithstanding any other provision of this regulation, 830 CMR 63.38M.1, a corporation that claims the credit for a taxable year beginning during 1990 and ending during 1991 may make or revoke the election for such taxable year and all subsequent taxable years by filing an amended return for the taxable year on or before the due date, determined without regard to any extensions, of the return for the next taxable year.

4. Aggregated groups. All members of an aggregated group, as defined by 830 CMR 63.38M.1.(7)(b), below, must compute gross receipts in the same manner. If the group elects to base the computation of the credit on Massachusetts gross receipts, the election is binding on all members for all subsequent taxable years. Entities that are members of an aggregated group when an election is made shall continue to be bound by the election in any subsequent taxable year during which they are not part of the group. However, where an entity leaves an aggregated group and in any subsequent taxable year becomes a member of a new aggregated group, the entity shall compute gross receipts in the same manner as the new aggregated group.

(e) Proration of Massachusetts Qualified Research Base Amount. For taxable years beginning before January 1, 1991, and ending before December 31, 1991, only, the Massachusetts qualified research base amount shall be multiplied by a fraction, the numerator of which is the number of days in

such taxable year beginning on or after January 1, 1991, and the denominator of which is the total number of days in such taxable year.

(6) Massachusetts Basic Research Payments.

(a) General. Massachusetts basic research payments taken into account for purposes of 830 CMR 63.38M.1(3)(a)2., above, shall be equal to the excess of such Massachusetts basic research payments over the Massachusetts base period amount.

(b) Base Period. For purposes of determining Massachusetts basic research payments the base period is the three taxable year period ending with the taxable year immediately preceding the first taxable year of the corporation beginning after December 31, 1983. In all instances the base period determined under this provision, 830 CMR 63.38M.1(6)(b) will be identical to the base period determined for federal tax purposes under Section 41(e)(7)(B) of the Code.

(c) Massachusetts Basic Research Payments. A corporation's Massachusetts basic research payment for a taxable year are those expenses that are basic research payments for the taxable year under Section 41(e)(2) of the Code, and that relate to basic research activity conducted in Massachusetts.

1. Basic research activity conducted in Massachusetts. Basic research activity is conducted in Massachusetts to the extent that it is performed at a research facility located in Massachusetts, regardless of whether the organization conducting the research is organized under the laws of Massachusetts or another jurisdiction. Where a basic research project is conducted jointly at research facilities located within and outside Massachusetts, Massachusetts basic research payments include only the payment attributable to the portion of the project conducted within Massachusetts, determined by specific accounting.

2. Field research outside Massachusetts. Where a basic research project involves field research conducted outside Massachusetts, Massachusetts basic research payments include expenses attributable to the field research only to the extent that the results of the field research are used in basic research conducted at a research facility located in Massachusetts. Where the results of field research will be used at research facilities both within and outside Massachusetts the expenses attributable to the field research must be apportioned to Massachusetts using a fraction, the

numerator of which is the number of research facilities located in Massachusetts at which the results of the field research will be used, and the denominator of which is the total number of research facilities at which the results will be used.

(d) Massachusetts Base Period Amount. The Massachusetts base period amount is the sum of the following amounts:

1. The minimum Massachusetts basic research amount, plus

2. The Massachusetts maintenance of effort amount.

For taxable years beginning before January 1, 1991, and ending before December 31, 1991, only, the Massachusetts base period amount shall be multiplied by a fraction, the numerator of which is the number of days in such taxable year beginning on or after January 1, 1991, and the denominator of which is the total number of days in such taxable year.

(e) Minimum Massachusetts Basic Research Amount.

1. General. The minimum Massachusetts basic research amount is an amount equal to the greater of the two following amounts:

a. One percent of the average of the sum of the amounts paid or incurred during the base period for (i) any in-house research expenses as determined for the taxable year under Section 41(e)(4)(A)(i)(I) of the Code to the extent such expenses are attributable to research activity conducted in Massachusetts under 830 CMR 63.38M.1(4)(b), above, and (ii) any contract research expenses as determined for the taxable year under Section 41(e)(4)(A)(i)(II) of the Code to the extent such expenses are related to research activity conducted in Massachusetts under 830 CMR 63.38M.1(4)(b), above; or

b. The amount paid by the corporation for basic research during the base period that was treated as contract research expenses during the base period under the Code as in effect during the base period, as determined under Section 41(e)(4)(A)(ii) of the Code as amended and in effect on August 12, 1991, to the extent that such amounts were paid for research activity conducted in Massachusetts under 830 CMR 63.38M.1(6)(c), above.

2. Floor amount. In the case of a corporation that either (i) was not in existence for at least one taxable year (other than a short taxable year) during the base period, or (ii) had no Massachusetts basic research payments, as determined under 830 CMR 63.38M.1(6)(c), above, during the base period, the minimum Massachusetts basic research amount shall not be less than 50 percent of the Massachusetts basic research payments for the taxable year for which the credit is being determined.

3. Inadequate records. If a corporation cannot compute the Massachusetts minimum basic research amount as required by this provision, 830 CMR 63.38M.1(6)(c), due to inadequate accounts and records for the base period, the Massachusetts minimum basic research amount is 50 percent of the Massachusetts basic research payments for the taxable year for which the credit is being determined.

(f) Massachusetts Maintenance-of-Effort Amount. The Massachusetts maintenance-of-effort amount for a taxable year is determined by (i) multiplying the the average of the nondesignated university contributions, as defined by Section 41(e)(5)(B) of the Code, paid to organizations organized under the laws of Massachusetts during the base period, by the cost-of living adjustment, as defined by Section 41(e)(5)(C) of the Code, and (ii) reducing the resulting amount, but not below zero, by the amount of nondesignated university contributions as defined by Section 41(e)(5)(B) of the Code, paid by the corporation to organizations organized under the laws of Massachusetts during the taxable year for which the credit is being determined.

(7) Controlled Groups and Entities Under Common Control.

(a) General. Two or more corporations that are members of the same controlled group, as defined by Section 41(f)(1)(A) of the Code, whether or not doing business in Massachusetts, must aggregate their activities as required by 830 CMR 63.38M.1(7)(b)-(i), below, for purposes of determining the credit. In addition, two or more entities, whether or not incorporated and whether or not doing business in Massachusetts, that are under common control, as defined by Section 41(f)(1)(B) of the Code, must aggregate their activities as required by 830 CMR 63.38M.1(7)(b)-(h), below. The credit allowable to a corporation subject to this provision, 830 CMR 63.38M.1(7)(a), is its share of the credit allowable to the entire aggregated group, determined under 830 CMR 63.38M.1(7)(b)-(i), below.

(b) Aggregated Groups. An aggregated group is a group of related entities that are required to aggregate their activities with each other under 830 CMR 63.38M.1(7)(a), above. Aggregated groups must compute a single aggregated credit for the entire group in the manner required by 830 CMR 63.38M.1(e), below, and must then allocate the amount of the aggregated credit in the manner required by 830 CMR 63.38M.1(7)(i), below, among the members of the aggregated group that are corporations doing business in Massachusetts.

(c) Certain Unincorporated Flow-Through Entities. Any unincorporated flow-through entity, such as a partnership or joint venture, whether or not a member of an aggregated group, that is owned to any extent by a member of an aggregated group, shall be treated as a flow-through entity for purposes of determining the aggregated credit. All amounts relevant to the calculation of the credit that are paid or received by such an entity shall be attributed to the owners of the entity as provided in 830 CMR 63.38M.1(3)(f), above. The separate existence of such entities shall be ignored for purposes of computing and allocating the aggregated credit.

(d) Other Unincorporated Entities. Any unincorporated entity that is a member of an aggregated group and is not treated as a flow-through entity under the provisions of 830 CMR 63.38M.1(7)(c), above, shall be treated as a separate entity for purposes of computing and allocating the aggregated credit.

(e) Computation of the Aggregated Credit. The aggregated credit for research expenses for the taxable year shall be an amount equal to the sum of the following amounts:

1. Ten percent of the excess, if any, of Massachusetts aggregated qualified research expenses for the taxable year, as determined under 830 CMR 63.38M.1(7)(f), below, over the Massachusetts aggregated qualified research base amount, as determined under 830 CMR 63.38M.1(7)(g), below, plus

2. Fifteen percent of Massachusetts aggregated basic research payments for the taxable year, as determined under 830 CMR 63.38M.1(7)(h), below.

(f) Aggregated Massachusetts Qualified Research Expenses. Aggregated Massachusetts qualified research expenses is the sum of the Massachusetts qualified research expenses, determined under 830 CMR 63.38M.1(4), above, of each member of the aggregated group that is not treated as a flow-through entity under 830 CMR 63.38M.1(7)(c), above, whether or not incorporated.

(g) Aggregated Massachusetts Qualified Research Base Amount. The aggregated Massachusetts qualified research base amount is determined under 830 CMR 63.38M.1(5)(a), above, in the same manner as for a single corporation, except as provided below:

1. Qualified research expenses. For all purposes relevant to the calculation, aggregated Massachusetts qualified research expenses, as determined for the entire group under 830 CMR 63.38M.1(7)(f), above, shall be substituted for Massachusetts qualified research expenses, as determined under 830 CMR 63.38M.1(4), above.

2. Gross receipts. Where the calculation involves gross receipts for a single taxable year, or for a period of taxable years, gross receipts for the relevant period shall be the sum of the gross receipts of all members of the aggregated group for that period, except gross receipts received by entities treated as flow-through entities and attributed to other members of the group under 830 CMR 63.38M.1(7)(c), above.

3. Start-up groups. The start-up provisions of 830 CMR 63.38M.1(5)(c)2., above, shall not apply to individual group members. However, where every member of an aggregated group, as comprised during the first taxable year for which the credit is claimed, is a start-up company under 830 CMR 63.38M.1(5)(c)2., above, during the first taxable year for which the credit is claimed, the Massachusetts fixed base percentage of the aggregated group is three percent.

4. Inadequate records. If any member of an aggregated group is unable to compute its base period aggregate Massachusetts qualified research expenses or base period aggregate gross receipts due to inadequate accounts and records for the base period, the Massachusetts fixed base percentage of the aggregated group is sixteen percent.

5. Minimum Aggregated Massachusetts Qualified Research Base Amount. Notwithstanding any other provision of this subsection, 830 CMR 63.38M.1(7)(g), in no event shall the aggregated Massachusetts qualified research base amount for the taxable year for which the credit is being determined be less than 50 percent of aggregated Massachusetts qualified research expenses as computed for the taxable year under 830 CMR 63.38M.1(7)(f), above.

(h) Aggregated Massachusetts Basic Research Payments. The aggregated Massachusetts basic research payment is determined under 830 CMR 63.38M.1(6)(a), above, in the

same manner as for a single corporation, except as provided below:

1. Basic research payments. Massachusetts basic research payments shall be the sum of the Massachusetts basic research payments, determined under 830 CMR 63.38M.1(6)(c), above, of each of the members of the aggregated group that is not treated as a flow-through entity under 830 CMR 63.38M.1(7)(c), above, whether or not incorporated. For purposes of computing Massachusetts basic research payments under this provision, members of the aggregated group that are not corporations and are not treated as flow-through entities under 830 CMR 63.38M.1(7)(c), above, must compute their Massachusetts basic research payments under under 830 CMR 63.38M.1(6)(c), above, as though they were corporations.

2. Base period amount. The Massachusetts base period amount is the sum of the minimum Massachusetts basic research amounts, determined under 830 CMR 63.38M.1(6)(e), above, and the Massachusetts maintenance-of-effort amounts, determined under 830 CMR 63.38M.1(6)(f), above, of each of the members of the aggregated group that is not treated as a flow-through entity under 830 CMR 63.38M.1(7)(c), above, whether or not such entities are incorporated. For purposes of determining the sum of the members' Massachusetts maintenance-of-effort amounts under this provision, 830 CMR 63.38M.1(7)(h)2., only, the maintenance-of-effort amount for any member may be negative, but may not be used to reduce the minimum basic research amounts of the group or any member. For purposes of computing the Massachusetts base period amount under this provision, members of the aggregated group that are not corporations and are not treated as flow-through entities under 830 CMR 63.38M.1(7)(c), above, must compute their Massachusetts base period amounts under under 830 CMR 63.38M.1(6)(d), above, as though they were corporations.

3. Floor amount. The floor amount provisions of 830 CMR 63.38M.1(6)(e)2., above, shall not apply to individual group members. However, where no member of the aggregated group, as comprised during the first taxable year for which the credit is claimed, both (i) existed for at least one taxable year (other than a short taxable year) during the base period, and (ii) made Massachusetts basic research payments, as determined under 830 CMR 63.38M.1(6)(c), above, during that base period taxable year, the minimum Massachusetts basic research amount for the aggregated group shall not be less than 50 percent of the

Massachusetts basic research payments, as determined under 830 CMR 63.38M.1(7)(h)1., for the taxable year for which the credit is being determined.

4. Inadequate records. If any member of an aggregated group is unable to compute its minimum basic research amount due to inadequate accounts and records for the base period, the Massachusetts minimum basic research amount of the aggregated group is 50 percent of the group's aggregated Massachusetts basic research payments, determined under 830 CMR 63.38M.1(7)(h)1., for the taxable year for which the credit is being determined.

(i) Allocation of the Aggregated Credit. The aggregated credit, as determined under 830 CMR 63.38M.1(7)(e), above, shall be allocated in the following manner to each member of the aggregated group that is a corporation doing business in Massachusetts to determine such member's credit for the taxable year. Each such member's allocated share of the credit is the aggregated credit, as determined under 830 CMR 63.38M.1(7)(e), above, multiplied by a fraction, the numerator of which is the sum of the member's Massachusetts qualified research expenses, as determined under 830 CMR 63.38M.1(4), above, and the member's Massachusetts basic research payments, as determined under 830 CMR 63.38M.1(6), above, and the denominator of which is the sum of all such members' Massachusetts qualified research expenses, as determined under 830 CMR 63.38M.1(4), above, and Massachusetts basic research payments as determined under 830 CMR 63.38M.1(6), above. The amount of any credit generated by the activity of an unincorporated entity or corporation not doing business in Massachusetts and attributed to a corporation doing business in Massachusetts under this provision, 830 CMR 63.38M.1(7)(i), shall be deemed to be generated by the corporation doing business in Massachusetts for purposes of carrying the credit over to subsequent taxable years under 830 CMR 63.38M.1(10), below.

(8) Limitations on the Credit. The amount of the credit, including any credit carried over from previous taxable years under 830 CMR 63.38M.1(10), below, that a corporation may claim for a taxable year is limited in the following ways.

(a) $25,000 Limitation. The amount of the credit is limited to 100 percent of the corporation's first $25,000 of corporate excise liability, plus 75 percent of the corporation's corporate excise liability in excess of $25,000.

1. Calculation of corporate excise liability. For purposes of applying the $25,000 limitation, corporate excise liability is determined under M.G.L. c. 63, s.

32(a) for domestic corporations and M.G.L. c. 63, s. 39(a) for foreign corporations, before the application of any credits. Corporate excise liability includes amounts due under both the income and non-income measures of the corporate excise.

2. Aggregated groups. A single $25,000 limitation applies to all the members of an aggregated group, as defined under 830 CMR 63.38M.1(7)(b), above, that are corporations doing business in Massachusetts. Whether such members file separate returns, or file as a combined group, the amount of corporate excise liability below which 100 percent of the credit is available must be reduced for each such member to an amount equal to $25,000, multiplied by a fraction, the numerator of which is the member's separately determined corporate excise liability and the denominator of which is the sum of the separately determined corporate excise liabilities of all such members.

(b) Minimum Corporate Excise Limitation. A corporation may not use the credit to reduce its corporate excise liability below the minimum corporate excise imposed under M.G.L. c 63, ss. 32(b), 39(b).

(c) Carry Over of Disallowed Credit. The amount of any credit that is not allowed for a taxable year due to the limitations described by 830 CMR 63.38M.1(8)(a), (b), above, may be carried over to subsequent taxable years as provided by 830 CMR 63.38M.1(10), below.

(9) Interaction With Other Credits. Corporations that can claim both the research credit and any other credit allowed under M.G.L. c. 63, for a taxable year may apply the research credit in any order they desire with respect to such other allowable credits. Under most circumstances claiming the credit in the order listed on Forms 355A and 355B will benefit the corporation by giving priority to credits that lapse first. Corporations that depart from the order listed on Forms 355A and 355B for any taxable year must attach to their return for the taxable year and all subsequent taxable years an addendum reconciling the total amount of each credit claimed using the order adopted by the corporation with the total amount of each credit that would have been claimed using the order listed on the form.

(10) Carry Over of Unused Credit.

(a) General. A corporation that does not use the full amount of the credit generated in a taxable year may carry the unused amount of the credit over to succeeding taxable years as follows:

1. Unlimited carry over. Amounts of the credit that are not used in a taxable year because of the $25,000 limitation described by 830 CMR 63.38M.1(8)(a), above, may be carried over to any succeeding taxable year.

2. Fifteen year carry over. Amounts of the credit that are not used in a taxable year because the amount of the credit exceeds the corporation's corporate excise liability for the taxable year, or because of the minimum corporate excise limitation described by 830 CMR 63.38M.1(8)(b), above, may be carried over to any of the fifteen taxable years succeeding the taxable year in which the credit is generated. The amount of any credit that is not used during the fifteen year carry over period expires and may never be applied to reduce the corporate excise.

(b) Accounting for Unused Credit. Corporations must keep records distinguishing amounts of unused credit eligible for unlimited carry over from amounts of the credit eligible for fifteen year carry over. In addition, corporations must keep records of the amount of credit eligible for carry over generated in each previous taxable year and the amount of such credit that was carried over and used in succeeding taxable years.

(c) Carry Over to Earliest Eligible Year. The unused, unexpired, amount of the credit generated in a taxable year must be carried over to the earliest succeeding taxable year for which it may be applied under the ordering rules applicable to the corporation under 830 CMR 63.38M.1(9). The unused, unexpired, amount of the credit generated in a taxable year must be used before any unused, unexpired, credit generated in a succeeding taxable year.

(d) Carry Over Amount. The amount of the credit generated in previous taxable years that may be carried over and applied for a taxable year is the total amount of unused, unexpired, credit genera[illegible]n previous taxable years, that may be applied in t[illegible]xable year under this regulation, 830 CMR 63.38[illegible].

(e) Interaction With Current Credit. Where a corporation has available both an amount of credit generated in the current taxable year and an amount of credit carried over from previous taxable years, the corporation must app[illegible] the amount of credit generated in the current taxable [illegible]r before applying any carry over amounts.

(11) Mergers and Changes of Ownership.

(a) Mergers. In the event of a merger of two or more corporations, the surviving corporation shall determine the amount of the credit, and the availability any credit carry over, under the provisions of this regulation, 830 CMR 63.38M.1, subject to the following additional rules:

1. Effect of merger on calculation of qualified research base amount. For purposes of calculating the Massachusetts qualified research base amount under 830 CMR 63.38M.1(5), the surviving corporation shall add the separately calculated Massachusetts qualified research base amounts of all corporations absorbed in the merger to its own Massachusetts qualified research base amount.

2. Effect of merger on calculation of Massachusetts basic research payments. For purposes of calculating Massachusetts basic research payments under 830 CMR 63.38M.1(6), the surviving corporation's Massachusetts base period amount, as determined under 830 CMR 63.38M.1(6)(d), shall include the separately calculated Massachusetts base period amounts of all corporations absorbed in the merger.

3. Effect of merger on credit carry over. In the event of a merger of two or more corporations, the surviving corporation retains any amount of credit carry over, determined under 830 CMR 63.38M.1(10), above, that it separately generated before the merger. All of the credit carry over generated by a corporation absorbed in the merger is lost. The surviving corporation may not apply or carry over any amount of credit generated by a corporation that it absorbs. In the event of a consolidation of two or more previously existing corporations into a new corporation, the new corporation starts with no credit carry over. All of the credit carried over by the previously existing corporations is lost. The new corporation may not apply or carry over any amount of credit generated by any of the previously existing corporations before the consolidation.

(b) Other Acquisitions. Where, after December 31, 1983, a corporation acquires the major portion of the trade or business of another person (a "predecessor") or the major portion of a separate unit of trade or business of a predecessor within the meaning of Section 41(f)(3)(A) of the Code, and where 830 CMR 63.38M.1(11)(a) does not apply, the acquiring corporation shall determine its Massachusetts qualified research base amount under 830 CMR 63.38M.1(5) by increasing its Massachusetts qualified research expense and gross receipts for the base period by

so much of the amount of the Massachusetts qualified research expense and gross receipts of the predecessor as is attributable to the portion of such trade or business or unit of trade or business acquired by the corporation.

(c) Certain Dispositions. Where, after December 31, 1983, a corporation disposes of the major portion of its trade or business or the major portion of a separate unit of its trade or business within the meaning of Section 41(f)(3)(A) of the Code, and where 830 CMR 63.38M.1(11)(b), above, applies to the transaction, the corporation making the disposition may determine its Massachusetts qualified research base amount under 830 CMR 63.38M.1(5) by reducing its Massachusetts qualified research expense and gross receipts for the base period by so much of the amount of its Massachusetts qualified research expense and gross receipts as is attributable to the portion of the trade or business or unit of trade or business disposed of by the corporation, provided that the corporation provides the acquirer such information as is necessary to make the calculations required by 830 CMR 63.38M.1(11)(b), above.

(d) Application of Code Section 383. Where a corporation undergoes an ownership change, as defined under Section 383 of the Code, as amended and in effect for the taxable year, the amount of the corporation's corporate excise liability attributable to the net income measure of the corporate excise that may be offset by the research credit in any taxable year shall not exceed the limitation imposed by Section 383 of the Code, provided that the limitation shall be adjusted for differences between Massachusetts net income and federal taxable income.

(12) Combined Groups.

(a) General. The amount of the credit shall be determined separately, under the provisions of this regulation, 830 CMR 63.38M.1, for each corporation that is a member of a combined group, as defined at 830 CMR 63.32B.1(2).

(b) Limitations on the Credit. The limitations on the amount of the credit that a corporation may claim for a taxable year, described at 830 CMR 63.38M.1(8), above, shall apply to each member of a combined group separately, provided that members of an aggregated group must reduce the amount of corporate excise liability below which 100 percent of the credit is available as required by 830 CMR 63.38M.1(8)(a)2., above. In applying those limitations, the corporate excise liability of each member of the combined group is the member's separately computed excise determined under 830 CMR 63.32B.1(8)(a).

(c) Sharing the Credit. A member of a combined group must use the amount of the credit available to it for a taxable year first to offset its own separately determined corporate excise liability for the taxable year. Where a member of a combined group cannot use the full amount of the credit available for a taxable year because the amount of the credit exceeds its separately determined corporate excise liability or because of the limitations on the credit described by 830 CMR 63.38M.1(8), above, that member may share the amount of the credit that it cannot use with other members of the combined group to the extent that such other members can apply the credit to their separately determined corporate excise liabilities for the taxable year under the limitations described by 830 CMR 63.38M.1(8), above. To the extent that the other members of the group cannot use the credit for the taxable year, the amount of unused, unexpired credit may be carried over to subsequent taxable years only by the member that generated the credit, and only to the extent permitted under 830 CMR 63.38M.1(10), above, and 830 CMR 63.38M.1(12)(d), below. Members of combined groups may share the credit in the manner described above regardless of whether the group filed a combined return for the taxable year in which the credit was generated.

(d) Carry Over. Subject to the carry over provisions of 830 CMR 63.38M.1(10), above, each member of a combined group may carry over any unexpired amounts of the credit that have not been used to reduce the corporate excise liability of any member of the combined group. Each member of a combined group may carry over amounts of unused, unexpired, credit only to the extent that such amounts are generated by the member itself. The combined group, therefore, has no credit or carry over of its own.

REGULATORY AUTHORITY

830 CMR 63.38M.1: M.G.L. c. 14, s. 6(1); M.G.L. c. 62C, § 3

Date of Promulgation: December 4, 1991

7960

EMERGENCY AMENDMENT

830 CMR: DEPARTMENT OF REVENUE

830 CMR 58.00: LOCAL TAXES

830 CMR 58.2.1: Manufacturing Corporations

830 CMR 58.2.1 is amended by adding the following section after Section (6)(e)5(b):

(c) A corporation which, but for the substantial manufacturing requirements of 830 CMR 58.2.1(6)(d), would otherwise qualify under this regulation for manufacturing corporation classification, may nonetheless be granted such classification, if, by submitting current information and reasonable projections of its business activities, it establishes that its manufacturing activities within a reasonable future period will be substantial under said section.

PROPOSED AMENDMENT TO MANUFACTURING REGULATION

A corporation may be classified as a manufacturing corporation for any calendar year in which it is in existence and engaged in manufacturing. G.L. c. 58, § 2. The Commissioner of Revenue determines whether or not a corporation is engaged in manufacturing, and has promulgated Regulation 830 CMR 58.2.1, setting forth the guidelines for making such determination. If a corporation is classified as a manufacturing corporation it may have the benefit of (1) a local property tax exemption (G.L. c. 59, § 5(16)(31)), (2) an investment tax credit (G.L. c. 63, § 31A), and (3) an exemption from sales tax with respect to certain property used in research and development (G.L. 64 H, § 6(r) and (s)).

A corporation's manufacturing activities must be "substantial", before it can be classified as a manufacturing corporation. Whether a corporation's manufacturing activities are substantial depends upon the facts and circumstances of each case. The Regulation provides that ordinarily the commissioner will classify a corporation's manufacturing activities as substantial if any one of three tests is met.

These tests, however, are based on activities of the preceding tax year and cannot be used by start-up corporations or by corporations which have not previously engaged in substantial manufacturing operations in Massachusetts. Therefore the Regulation, in § (6)(e)5 provides (1) that a corporation which does not meet any of the three tests solely because it was not in existence in the previous tax year may submit current information

and reasonable projections of its business activity "for the first year of its existence", and (2) that a corporation which was in existence in a previous tax year but which did not previously perform any manufacturing activities in Massachusetts may submit current information and reasonable projections of its business activity "for the taxable year in which it begins manufacturing".

Many start-up corporations and research corporations find that they cannot meet any of the three tests in the first year of existence or in the first year that they acquire manufacturing capability, often because of regulatory delays in obtaining permits and authorization. Yet certain machinery may be subject to local property tax in the absence of the manufacturing classification. The Department of Revenue proposes to amend § 6(e)(5) of the Regulation to remove the requirement that the projections of manufacturing activity be confined to the first year of existence or the first year of manufacturing activity. This will not relieve the corporation from demonstrating that it is engaging in manufacturing, but it will extend the time within which it must meet the tests for determination that its manufacturing activities are substantial.

The Commonwealth of Massachusetts

IN THE YEAR ONE THOUSAND NINE HUNDRED AND EIGHTY-

PROPOSAL for a legislative amendment to the Constitution

A majority of all the members elected to the Senate and House of Representatives, in joint session, hereby declares it to be expedient to alter the Constitution by the adoption of the following Article of Amendment, to the end that it may become a part of the Constitution [if similarly agreed to in a joint session of the next General Court and approved by the people at the state election next following]:

ARTICLE OF AMENDMENT.

ART. . No law imposing or increasing any tax or excise shall be effective unless such law has been enacted by a vote of two-thirds of each house of the general court present and voting thereon; provided, that this amendment shall not apply to any law to the extent that it imposes or increases any local property tax or any excise imposed in lieu of local property taxes.

The Commonwealth of Massachusetts

IN THE YEAR ONE THOUSAND NINE HUNDRED AND NINETY-TWO

AN ACT AUTHORIZING THE CREATION OF ECONOMIC OPPORTUNITY AREAS.

WHEREAS, the deferred operation of this act would tend to defeat its purpose, which is to encourage economic revitalization through job creation, community development, and the elimination of blighted urban areas, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. DEFINITIONS

In this act, the following words shall have the following meanings:

(a) "Incidence of Poverty" shall mean the poverty rate, as defined by the Bureau of the Census, using the most recent census data available, for purposes of identifying poverty areas.

(b) "Office" snall mean the Executive Office of Communities and Development.

(c) "Secretary" shall mean the Secretary of Communities and Development.

NOTE. — Use ONE side of paper ONLY. DOUBLE SPACE. Insert additional leaves, if necessary.

(d) "Economic Opportunity Area" shall mean any area which meets the criteria of this act, which is nominated by one or more local governments in which it is located for designation as an "Economic Opportunity Area", and which the Secretary, in cooperation with the Secretary of Economic Affairs, and after consultation with the Secretary of Administration and the Secretary of Labor, designates as an Economic Opportunity Area.

(e) "Related Persons" shall mean persons who are engaged in Economic Opportunity Area Businesses under common control.

(f) "Economic Opportunity Area Business" shall mean a corporation conducting an active trade or business within an Economic Opportunity Area, which has been approved by the Secretary as an Economic Opportunity Area Business, and in which:

(1) at least 80 percent of its gross income in each calendar year is attributable to the active conduct of trade or business within the Economic Opportunity Area; and

(2) less than 10 percent of the property constitutes stocks, securities, or property held for use by customers; and

(3) less than 10 percent of the property constitutes collectibles, unless such collectibles constitute property held primarily for sale to customers in the ordinary course of the active trade or business; and

(4) a substantial amount of the property, whether owned, leased, or rented, is located within the Economic Opportunity Area in which the business is located; and

(5) a substantial number of its employees work within the Economic Opportunity Area.

A trade or business shall cease to be an Economic Opportunity Area Business if:

(i) the designation of the Economic Opportunity Area in which the trade or business is conducted is revoked, or

(ii) more than 50 percent of the trade's or business' property is owned or services are performed by Related Persons other than Economic Opportunity Area Businesses or corporations organized under Chapter 121A.

No business facility shall be eligible to receive the benefits provided for a facility located in an Economic Opportunity Area if such facility has relocated from another city or town within the commonwealth unless the Secretary finds that the relocation of the business facility will represent a net expansion of business operations and employment. For the purposes of subparagraph (f), relocation shall mean the transferring of personnel or employment positions from one or more existing locations to another location.

(g) "Economic Opportunity Area Employee" shall mean an individual:

(1) who is employed by an Economic Opportunity Area Business; and

(2) who is performing services during the taxable year that are related directly to the conduct of an Economic Opportunity Area Business; and

(3) who is performing a substantial amount of his or her services within an Economic Opportunity Area; and

(4) whose employer is not the federal, state, or local government, or any political subdivision thereof.

(h) "Economic Opportunity Area Property" shall mean any tangible personal or real property located within an Economic Opportunity Area and used by the person responsible for paying the taxes of an Economic Opportunity Area Business. In no event shall any financial property or intangible interest in property be treated as constituting Economic Opportunity Area Property, whether or not such property is used in the active conduct of an Economic Opportunity Area Business.

The treatment of property as Economic Opportunity Area Property shall terminate immediately upon the first sale or exchange of such property. Thereafter, the local government of the area where the Economic Opportunity Area is located may redesignate property as Economic Opportunity Area Property.

(i) "Economic Development Plan" snall mean a detailed plan, as may be approved from time to time by a municipality, as provided in Chapter 121C, for one or more economic development projects within an Economic Opportunity Area. The plan shall be consistent with local objectives respecting appropriate land uses and shall be sufficiently complete to indicate the boundaries of the area. It shall identify such land acquisition, such demolition, removal and rehabilitation of structures, and such development, redevelopment and general public improvements as may be proposed to be carried out within such area, including zoning and planning changes, if any, proposed land uses, maximum densities and building requirements. However, no Economic Development Plan shall propose zoning changes to or from business or residential uses or provide for any office building other than one wholly incidental to a manufacturing or industrial use within the Economic Opportunity Area without the specific approval of the city or town within which the Economic Development Project lies.

(j) "Economic Development Project" shall mean:

(1) a project to be undertaken in accordance with an Economic Development Plan for acquisition of land and the improvements thereon, if any, within an Economic Opportunity Area and for clearance and development of the land so acquired; or

(2) a project for the rehabilitation or conservation of an Economic Opportunity Area, or for the demolition, removal, or rehabilitation of improvements on land within an Economic Opportunity Area whenever necessary to eliminate unhealthful, unsanitary or unsafe conditions, lessen density,

mitigate or eliminate traffic congestion, reduce traffic hazards, or eliminate obsolete or other uses detrimental to the public welfare; or

(3) a project involving any combination of the foregoing types of projects.

An Economic Development Project may include improvements necessary for carrying out the objectives of the Economic Development Project, together with such site improvements as are necessary for the preparation of any site for uses in accordance with the Economic Development Plan, and making any land or improvements acquired in the area of the project available for redevelopment or rehabilitation by private enterprise, including sale, initial leasing or retention for industrial or manufacturing uses in accordance with the Economic Development Plan. An Economic Development Project may also include the construction of any of the buildings, structures, or other facilities for industrial or manufacturing uses contemplated by the Economic Development Plan and the repair, removal or rehabilitation of any of the buildings, structures or other facilities located in the area covered by the Economic Development Plan which, under such plan, are to be repaired, moved or rehabilitated.

(k) "Economic Opportunity Area Loss" shall mean any loss incurred by an Economic Opportunity Area Business as a result of the operation of a trade or business within an Economic Opportunity Area.

SECTION 2. ADMINISTRATION OF THE ACT

The Secretary, in cooperation with tne Secretary of Economic Affairs, after consultation with the Secretary of Administration and the Secretary of

Labor, shall exercise the following powers and duties:

(a) to promulgate rules and regulations and to prescribe procedures to effectuate the purposes of this act; and

(b) to establish additional criteria for determining what areas qualify as Economic Opportunity Areas; and

(c) to review applications submitted by the cities and towns under this act and to designate qualified areas as Economic Opportunity Areas.

The Secretary, in cooperation with the Secretary of Economic Affairs, shall have the following powers and duties:

(a) To assist cities and towns in implementing this act and in obtaining the waiver or modification of state and federal rules within Economic Opportunity Areas;

(b) To assist cities and towns in obtaining state and federal resources and assistance for Economic Opportunity Areas and for qualified businesses operating within Economic Opportunity Areas;

(c) to provide appropriate coordination with other state programs, agencies, authorities and public instrumentalities, including, but not limited to, the Massachusetts Industrial Finance Agency, the Massachusetts Port Authority, and the Massachusetts Technology Development Corporation, to enable activity within Economic Opportunity Areas to be more effectively promoted by the commonwealth;

(d) to monitor the implementation and operation of this act;

(e) to conduct a continuing evaluation of Economic Opportunity Areas and Economic Opportunity Area Businesses; and

(f) to submit reports to the Legislature evaluating the effectiveness of this act and making suggestions for improvements, which may include legislative recommendations, by March 1 of each calendar year for as long as this act remains in effect.

SECTION 3. NOMINATION OF ECONOMIC OPPORTUNITY AREAS

Any city or town may nominate any area within that city or town to be designated an Economic Opportunity Area, provided that the nominated area meets the following requirements:

(a) the area is within the jurisdiction of the government of the city or town; and

(b) the boundaries of the area are contiguous; and

(c) the nominated area contains vacant land and/or unused or underutilized industrial facilities; and

(d) the nominated area meets such other requirements as may be established by regulations promulgated by the Secretary, in cooperation with the Secretary of Economic Affairs, after consultation with the Secretary of Administration and the Secretary of Labor. If more than one government seeks to nominate an area as an Economic Opportunity Area, any reference to, or requirement of, this section shall apply to all such governments.

(e) the nominated area meets at least one of the following four specific criteria:

(1) an unemployment rate that is 125% higher than the average unemployment rate in the commonwealth during the prior calendar year; or

(2) the loss of at least 10% of its population during the ten year period from 1980 to 1990; or

(3) an Incidence of Poverty 125% higher than the average Incidence of Poverty in the commonwealth; or

(4) a loss of at least 2,000 jobs over the previous four years.

SECTION 4. APPLICATION FOR AREA DESIGNATION

Any city, by vote of the city council and approval by the mayor, or town, by vote at the town meeting, may adopt an ordinance or by-law authorizing such

city or town to prepare and submit an application to the Secretary for designation as an Economic Opportunity Area. Such application shall be prepared in a manner and form prescribed by regulations promulgated by the Secretary and shall contain the following:

(a) a map of the area comprising the proposed Economic Opportunity Area, which identifies the nominated area and indicates existing streets, highways, waterways, natural boundaries and other physical features;

(b) a plan by which the city or town will provide property tax relief to an Economic Opportunity Area Business at least in the following amounts:

Year 1: 100% reduction in assessed value
Year 2: 80% reduction in assessed value
Year 3: 60% reduction in assessed value
Year 4: 40% reduction in assessed value
Year 5: 20% reduction in assessed value
Year 6: 0% reduction in assessed value

(c) a plan, for approval by the Secretary, or such other person as the Secretary shall designate, which provides for streamlined zoning and licensing procedures for Economic Opportunity Area Businesses within the designated area;

(d) a plan, for approval by the Secretary, or such other person as the Secretary shall designate, which demonstrates infrastructure support for Economic Opportunity Area Businesses and Economic Opportunity Area Property, including the provision of transportation access and egress, water and sewer hook-ups, and lighting and other utilities;

(e) a plan, for approval by the Secretary, or such other person as the Secretary shall designate, which describes training programs that will be made available to employees performing services for an Economic Opportunity Area Business within the nominated area;

(f) a plan which provides for an increase in the level of efficiency of local services delivered within the Economic Opportunity Area;

(g) a plan for involvement by private entities and community development organizations in the economic revitalization of the nominated area, including a commitment from private entities to provide jobs and job training for employees and residents who work, or will work, in the Economic Opportunity Area Business within the nominated area; and

(h) either an Economic Development Plan for utilizing the economic development tools provided by one or more of Chapters 121A, 121C and 40D of the General Laws in order to implement an Economic Development Project or, if no plan is provided, an explanation for its omission.

SECTION 5. DESIGNATION OF ECONOMIC OPPORTUNITY AREAS

The Secretary, in cooperation with the Secretary of Economic Affairs, shall have the authority to designate an unlimited number of Economic Opportunity Areas within the commonwealth, provided that the Secretary shall not make any designation under this act unless:

(a) the local government nominates such area as an Economic Opportunity Area in accordance with the requirements of this act;

(b) the area meets the requirements set forth in this act; and

(c) the state and local governments of the jurisdiction in which the area is located agree in writing that during the period in which the nominated area is designated as an Economic Opportunity Area, such governments will follow a specified course of action designed to reduce burdens borne by employers and employees in such area, provide the benefits specified in section 2 and ensure that the intent of this act is fulfilled.

The Office must evaluate and either grant or deny an application submitted by a city or town nominating an area for designation as an Economic Opportunity Area within 60 days of the date the application is received by the Office. If a nomination is accepted, the nominated area that is the subject of the application shall be designated an Economic Opportunity Area.

An Economic Opportunity Area shall retain its designation for fifteen years from the date it is designated, unless such designation is revoked prior to the expiration of fifteen years. If a city or town wishes to request the revocation of an Economic Opportunity Area's designation, the city or town may submit notice of that fact to the Office together with justification for its request. The Secretary, in consultation with the Secretary of Administration and the Secretary of Labor, and after obtaining the advice and consent of the

Secretary of Economic Affairs, may revoke the designation of an Economic Opportunity Area if the Secretary determines that a local government in which the area is located is not complying substantially with the agreed course of action for the area.

After evaluation and review, the Office shall have the authority, with the recommendation of the city or town within which the area is located, to renew the designation of an area as an Economic Opportunity Area on or before the date such designation has expired.

SECTION 6. PROVISION OF STATE TAX INCENTIVES

Any Economic Opportunity Area Business may deduct Economic Opportunity Area Losses under Chapter 63 of the General Laws at any time during the ten years following the loss, but in no event may a corporation deduct Economic Opportunity Area Losses later than ten years following the expiration or revocation of the designation as an Economic Opportunity Area.

Any Economic Opportunity Area Business shall be entitled to a tax credit under Chapter 63 equal to three percent (3%) of the value of products manufactured by an Economic Opportunity Area Business within an Economic Opportunity Area and exported out of the United States.

Any Economic Opportunity Area Business shall be allowed a credit as hereinafter provided against the excise tax due under Chapter 63. The amount of the credit shall be determined by multiplying one thousand dollars by the increase in the number of full-time Economic Opportunity Area Employees

employed by the Economic Opportunity Area Business during a taxable year, computed in accordance with the definitions set forth in Section 31C of Chapter 63.

Any Economic Opportunity Area Business shall be entitled to a credit of five percent (5%) against the tax imposed on corporations under Chapter 63. Such credit shall be based on the total amount of investment made in Economic Opportunity Area Property. Such credit may be applied each year such business operates within an Economic Opportunity Area. The commonwealth shall not be required to refund any money to any Economic Opportunity Area Business in the event that the credit allowed under this section exceeds the total amount of tax owed by such Economic Opportunity Area Business.

Any Economic Opportunity Area Business is entitled to a one-time deduction under Chapter 63 of ten percent (10%) of the total cost of renovations made to a previously underutilized or abandoned building within an Economic Opportunity Area, if the Economic Opportunity Area Business occupies, or will occupy, such building and the building has been renovated by the Massachusetts Government Land Bank.

SECTION 7. FOREIGN TRADE ZONE

Any part of a city or town which has been designated an Economic Opportunity Area in accordance with this act is hereby authorized to make application to the foreign trade zone board established by an act of Congress

entitled "An act to provide for the establishment, cooperation and maintenance of foreign trade zones in ports of entry of the United States to expedite and encourage foreign commerce, and for other purposes", for a grant to said city or town for the privilege of establishing, operating and maintaining a foreign trade zone within its Economic Opportunity Area.

SECTION 8. OTHER PROVISIONS

Each department of state government in the commonwealth shall endeavor to provide coordinated one-stop licensing for all businesses located within an Economic Opportunity Area in order to expedite the process of obtaining commonwealth licenses, permits, certificates, approvals, registrations, charters and other requirements of law.

Upon the written request of any city or town which nominated an Economic Opportunity Area, a state agency is authorized, in order to further job creation, community development or economic revitalization objectives within the Economic Opportunity Area, to waive or modify all or part of any rule it has authority to promulgate, as such rule pertains to the carrying out of projects, activities or undertakings within the Economic Opportunity Area.

In considering a request under this section, the agency shall weigh the extent to which the proposed waiver or modification is likely to further job creation, community development, or economic revitalization within the Economic Opportunity Area against the effect the change is likely to have on

the underlying purposes of the applicable rule in the geographic area which would be affected. The agency shall approve the request whenever it finds, in its discretion, that the public interest which the proposed waiver or modification would serve in furthering such job creation, community development, or economic revitalization outweighs the public interest in maintaining the rule unchanged. The agency shall not approve any request to waive or modify a rule if that waiver or modification would:

(1) violate a statutory requirement, or

(2) be likely to present a significant risk to the public health, including environmental or occupational health or safety or environmental pollution.

Agencies shall discharge their responsibilities under this subsection in an expeditious manner and shall make a determination on requests not later than 90 days after their receipt.

To facilitate reaching its decision on any requested waiver or modification, the agency may seek the views of interested parties, determine how such views are to be obtained, and determine to what extent, if any, such views should be taken into account in considering the request.

No waiver or modification of a rule under this section shall remain in effect with respect to an Economic Opportunity Area after the Economic Opportunity Area designation has expired or has been revoked.

SECTION 9. The provisions of this act are severable and if any of its provisions shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions.